

INDUSTRIAL DISPUTES AND FEDERAL LEGISLATION

*With Special Reference to the Railroad, Coal, Steel and
Automobile Industries in the U. S. since 1900*

BY

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ASSOCIATE PROFESSOR OF SOCIAL LEGISLATION
SYRACUSE UNIVERSITY

SUBMITTED IN PARTIAL FULFILLMENT OF THE REQUIREMENTS

FOR THE DEGREE OF DOCTOR OF PHILOSOPHY

IN THE

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CONTENTS

CHAPTER I

THE PROBLEM OF INDUSTRIAL DISPUTES IN MODERN INDUSTRIAL SOCIETY

	PAGE
I. The question of wages, hours, security, and legislation resulting from industrial conflict	31
II. Contribution of the economist	34
III. The question of a legal minimum wage	37
IV. Nature and causes of strikes	45
V. Civil rights and labor disputes	46
VI. Advantages of dealing with a union	46
VII. Nature of strikes	46
A. Economic definitions	46
B. Legal definitions	47
VIII. The strike as an economic weapon of labor unions for collective bargaining	46
A. The right to organize	47
1. The legal status of labor unions, conspiracy, restraint of trade and statutory law	47
2. Attitude of the public toward the right to organize	49
3. Attitude of the federal government	49
4. Attitude of the employer	49
B. Collective bargaining	50
1. Attitude of employer	50
2. Attitude of labor unions	50
3. Individual's bargaining capacity	50
4. Necessity for collective bargaining, social and economic considerations	50
a. Collective bargaining through shop committees	51
b. Collective bargaining through labor unions	51
IX. The right to strike	52
A. The general right of labor unions to strike	52
B. Not all strikes lawful	52
C. Tests of the lawfulness of a strike	52
1. Object—intent to injure.	52
2. The manner in which it is conducted	53
X. Causes of strikes	53
A. Causes according to the reports of the Commissioners of Labor	53
1. For increase of wages	53
2. Against reduction of wages	53

	PAGE
3. For reduction of hours	53
4. Against increase of hours	53
5. Recognition of unions and union rules	53
6. Employment of certain persons (not involving union rules)	53
7. Employees working out of regular occupation	53
8. Overtime work and pay	53
9. Method and time of payment	53
10. Saturday and part-holiday	53
11. Docking, fines and charges	53
12. Working conditions and rules (not involving union rules)	53
13. In sympathy with strikes and employee lockouts.	53
14. Other causes not specified above	53
B. General causes of strikes.	54
1. Struggle for unionization	54
2. Wages of labor	54
3. Hours of labor	54
4. Conditions of employment	54

CHAPTER II

GAINS FOR LABOR IN AMERICAN INDUSTRY SINCE 1900

I. Recognition of the Union	56
A. In the coal industry	56
B. In the steel industry	57
II. Wages of labor	57
A. Wages in the two industries in 1900	57
B. Increase in wages since 1900	58
1. As a direct result of strikes	58
2. As an indirect result of strikes	58
C. Progress of collective bargaining	59
1. SWOC Agreement	59
III. Hours of labor	60
A. Hours of labor in the two industries in 1900	60
B. The problem of the seven-day week	60
C. Reduction in the working hours	60
1. In coal	60
2. Long struggle in steel	60
D. Popular and official demand for the eight-hour day	60
E. Establishment of the eight-hour day	60
IV. Effect of "New Deal" legislation generally on union expansion	60
A. Encouragement to union membership	61
B. Encouragement to collective bargaining	62
C. "New Deal" influence in legislation following Schechter decision	63

	PAGE
V. The Labor Advisory Board	63
A. With two exceptions, officers of A. F. of L.	63
B. Policies and changes brought about in administration	63
VI. Organizing campaign launched by labor	65
VII. The Advent of the Committee for Industrial Organization	66
A. Split with A. F. of L.	66
B. Partial success by C. I. O.	66
VIII. Settling disputes through conciliation and labor boards	67
A. Indirect result of strikes	67
B. Direct result of strikes	68
C. Union assistance	69
IX. Acts important to labor	70
A. Guffey Coal Act	70
B. Hawes-Cooper Act	73
C. Ashurst-Sumner Act	74
X. Prison-made goods and prison labor; extent, type and interstate sale of prison-made goods	75
A. Report of the President's special committee on prison cotton garment-making	76
XI. Legislation regulating intrastate labor	77
A. Social Security Act and state legislation	77
B. State labor relations boards	77
C. State mediation boards	78
D. Laws regulating hours and wages	78
E. State laws granting the right to bargain collectively	77
XII. The sit-down strike	79
A. Effect on the auto industry	80
B. Legal, political, and economic issues	81

CHAPTER III

LEGISLATION AND ADMINISTRATIVE ORDERS AFFECTING LABOR RELATIONS

I. Employment services, federal and state	84
A. Extent of unemployment	84
B. Causes of unemployment	85
C. Economic and social cost of unemployment.	85
D. First attempt of the federal government to regulate employment	85
1. Need for legislation	85
2. 1918 war measure	85
3. President Harding's attempt	85
4. The Wagner Act	86
a. President Hoover's veto	86
b. The Wagner Act reenacted	86
E. The present employment services	87

	PAGE
II. Legal Aid Societies	87
A. A poor man's court	87
1. Amount involved	87
B. The court of small claims	88
C. State legislation to assist workers	88
D. The future of "Legal Aid"	88
III. Collective Bargaining	88
A. Rights of self-organization	88
1. Advantage of capital	89
2. Shortcomings of company unions	89
3. Need for legislation	89
4. Federal agencies for settling labor disputes	89
IV. The Coal Commission of 1902	90
A. Report provides for conciliation and arbitration	91
1. A plan for collective bargaining	91
2. A plan for future bargaining	92
3. Joint conferences	92
a. Principles of the joint conference	92
B. New trade agreements	92
C. The agreements of 1926, voluntary arbitration	93
V. United States Steel	93
A. No government control until 1937	93
B. President Wilson's Industrial Conference	94
VI. The Anthracite Strike of 1922.	94
A. The demand of the workers	94
B. The deadlock of the joint conference	95
C. The U. S. Coal Commission's Conference	95
1. Finding of the Commission and the miners' refusal to arbitrate	95
D. Governor Pinchot calls a conference	96
1. Terms of the agreement	96
VII. The Development of Federal Intervention	98
A. The Erdman Act	99
B. The Newlands Act	99
C. Adjustment Boards	99
D. The Transportation Act	99
E. The National Mediation Board	100
VIII. Laws Governing Labor Disputes	100
A. The anti-trust laws restrict labor	100
1. The Sherman Act	101
2. The Clayton Act	103
B. Court decisions restricting labor	101
1. The Danbury Hatters Case, <i>Loewe v. Lawlor</i>	102
2. <i>Hitchman Coal and Coke Co. v. Mitchell</i>	103

	PAGE
C. Labor campaigns for new federal law	105
1. The Norris-LaGuardia Act	105
a. The "elimination" of injunctions	105
D. Public attitude and government intervention	106
IX. The Apex Hosiery Case	106
A. History of the case	107
B. Damages awarded	107
C. Precedent for the decision	107
D. The sit-down strike	107
E. Primary question	107
F. Effect of decision on labor	108
X. The National Labor Relations Board	108
A. Labor's attitude toward the court	108
1. The question of property	108
2. Injunctions	109
B. The State and anti-injunction laws	109
C. Jurisdiction of the Board	110
D. Relation to other executive agencies	111
E. Weakness of the Board	111
F. The Board and the Department of Labor	111
G. The powers of the Board	112
H. Protection of employees	112
I. How the Act differs from other Acts	113
J. Should the Board be within the Department of Labor	113
1. Attitude of the Senate	115
2. Attitude of the House	115
XI. Arbitration and Mediation	117
A. Permanent boards new to American industry	117
B. Commercial arbitration based on contract	118
C. The meaning of mediation	118
D. The meaning of voluntary arbitration	118
E. The difference between mediation and arbitration	118
F. The states and arbitration laws	119
G. Compulsory investigation	119
H. Compulsory arbitration	119
I. The power of the State	120
J. Technical process for arbitration	121
K. The establishment of organized arbitration	121
L. Commercial and industrial arbitration	121
XII. The interrelation of business and social welfare	122
A. Value of past and present codes	123
B. Value of research agencies	124
C. The code procedure	124
D. A decision of the National Labor Board	124

	PAGE
E. The importance of the federal government's sponsorship of Industrial Boards	125
XIII. Fair Labor Standards Act	125
A. Child labor under the Act	126
B. Minimum wages and maximum hours	127
C. Nature of violations	127

CHAPTER IV

LEGAL METHODS AND TECHNIQUES AFFECTING LABOR DISPUTES

I. Effort on the part of the government to prevent strikes	128
A. Intervention at time of strike	128
B. Commissions to prevent labor strife	129
C. The government intervention in the railroad industry	129
D. Labor disputes leading to the National Labor Relations Act	130
II. The National Labor Relations Act	130
A. The Act declares "unfair" practices	130
B. Jurisdiction of the N. L. R. B.; disputes affecting interstate commerce	130
C. Procedure of the Board	130
D. Legislation designed to reduce labor disputes	131
E. Section I of the Act	133
F. A quasi-judicial body	133
G. The Board has no authority to mediate or conciliate	134
H. Present problems for the Board	134
I. Duties of the Board	134
J. Opposition to the Board	134
K. U. S. Supreme Court decisions	135
III. The Canadian Industrial Disputes Act	139
A. Legislation leading to the Disputes Act	140
B. Power to mediate	141
C. Object of the Act	142
D. Free from rigid rules of procedure	142
E. Attitude of Canadian labor	144
F. Attitude of Canadian employers	144
G. Public opinion	144
H. The success of the Act	145
I. The Act and sit-down strikes	146
IV. The Canadian Act and recent U. S. Laws	148
A. The Railroad Labor Act	148
B. The Guffey Act	148
C. The National Labor Relations Act	149
D. Canadian Act recommends mediation	149
E. The N. L. R. B.—no machinery for mediation	149
F. To bargain collectively made mandatory for employers by both Acts	149

	PAGE
V. Fundamental difference between the Canadian and U. S. legis- lation	150
A. Canadian Board for each dispute	150
B. Permanent Board in the U. S.	150
C. Right to strike as an American tradition	152
D. Public welfare under the plans	153

CHAPTER V

THE DEVELOPMENT OF NATIONAL LEGISLATION AFFECTING RAILROADS— THE MEDIATION BOARD

I. Events leading to enactment of legislation	154
A. Labor disputes	155
B. Interstate Commerce Act	154
C. Exclusive jurisdiction and power to regulate by the federal government	155
D. Public interest	155
II. Legislation enacted by the federal government	155
A. President Cleveland and the Act of 1888	156
1. Voluntary arbitration and investigation	156
2. Ineffectiveness of the Act	157
B. The Erdman Act of 1898	157
1. Methods of settling disputes	157
a. Mediation	157
b. Conciliation	157
c. Thirty-day notice required	157
d. Elimination of the "yellow dog" contract	157
2. Provision for a permanent government agency	158
C. The Erdman Act constitutional— <i>Adair v. U. S.</i>	159
D. The Newlands Act of 1913	159
1. Experience of previous acts	159
2. Emphasis on mediation and conciliation	159
3. Six-member Board of Arbitration	160
4. Success of the Act	160
E. The movement for an eight-hour day	161
1. Strike of 1916	161
2. President Wilson's conference	161
F. The Adamson Act of 1916	162
1. The eight-hour day	162
2. A fact-finding commission appointed	162
G. Railroads during the war period	163
1. U. S. railroad administration	163
a. Division into boards	163
2. Growth of unions	163
3. Nationwide organization	163

	PAGE
H. The Transportation Act of 1920	162
1. Public attention focused on public utilities	162
2. No provision for self-organization	164
3. Methods of settling disputes under the Act,	165
a. Conference between carriers and employers first	165
b. U. S. Railroad Labor Board	165
4. Inadequate staff	166
5. Refusal of carriers to abide by the Board's decision	166
6. Dependence of enforcement on public opinion	166
7. The failure of the Act	167
I. Railway Labor Act of 1926	167
1. Sponsorship by carriers and railway unions	167
2. Abolition of Railway Labor Board	168
3. Establishment of National Board of Mediation	168
4. Provision for voluntary arbitration	169
5. Provision for emergency boards	169
6. Assurance of collective bargaining	169
7. <i>Bona fide</i> labor unions encouraged	169
J. Bankruptcy and Emergency Transportation Act of 1933	170
1. Wages and working conditions of railway employees	170
2. Company unions discouraged	170
3. "Yellow dog" contracts prohibited	170
K. Railway Labor Act of 1926, amended in 1934	172
1. Provision of Section 2 of amendment that carriers treat with employees' representatives	173
2. Provision for enforcement by procedure of law of decisions of the Board	174
3. Employees guaranteed the right to organize	175
4. Establishment of more effective machinery for set- tling disputes	176
5. Method of operation	181
6. Success of the Board	185

CHAPTER VI

THE GOVERNMENT AND INDUSTRIAL DISPUTES IN COAL

I. Geographical concentration of the industry	187
A. Trade and labor districts in anthracite coal fields	187
II. Concentration of control through the anthracite combination	188
III. Labor organizations in anthracite industry	191
A. Miners and their unions	193
B. Labor turnover	194
C. Anthracite labor leadership and difficulties	195
IV. Collective bargaining in anthracite industry	195
A. Labor policy of the operators	195
B. Attitude of foreign labor	195

	PAGE
V. Strikes in anthracite. General and local strikes and general suspensions	196
A. The strike of 1900, September 17 to October 29	196
1. Union mine workers and the strike	196
2. Causes of the strike	196
3. "No conference" attitude of operators	196
B. Award of the Anthracite Commission of 1920	197
C. Strikes of 1922	197
1. Demands	197
2. Results	199
3. Recommendations of the United States Coal Commission of 1923	201
D. Strikes of 1925 and 1926	203
VI. "Bootleg Coal"	206
A. Legal, political, and economic issues	207
B. Effect on the coal market	208
C. The legislature creates a fact-finding commission	210
D. Concentration of the industry, geographically	211
E. Concentration as to ownership	212
F. Employment and wages	215
G. The report of the U. S. Anthracite Coal Commission	217
H. Other fuels as a factor	219
I. The Anthracite Coal Industry Commission reports	221
J. Accidents in illegal mining	223
K. Wages in illegal mining	223
L. Number employed in illegal mining	224
M. The breakdown of the legal process of justice	224
1. An effort to stop illegal mining	225
2. An effort to keep out illegal coal	227
3. Public assistance to the illegal miner	227
N. Anthracite Coal Industry Commission recommendations	228
VII. Federal intervention as suggested by Anthracite Coal Industry Commission	229
A. Expansion of output	229
B. Forms of federal intervention	232
C. Government refuses to take over	235

CHAPTER VII

THE LABOR POLICY OF STEEL AND GOVERNMENT INTERVENTION

I. Formation of the Steel Corporation	236
A. Subsidiary companies	236
B. Position of the Corporation in the steel industry	236
II. Labor policy of the Corporation	236
A. Labor policy of subsidiary companies before 1900	236
B. Attitude of the Corporation toward labor organization	237

	PAGE
III. The struggle for collective bargaining in the United States Steel industry since 1900	238
A. The open shop	238
B. The closed shop	238
IV. History of strikes in the steel industry	238
A. Collective bargaining in steel	238
B. The strike of 1901	238
C. The strike of 1904	239
D. The strike of 1909	239
E. The Great Strike of 1919	240
1. The American Federation of Labor and the unionization of labor in the steel industry	240
2. Reasons for failure of strikes in steel	241
3. C. I. O. organizes steel in 1937	241
V. U. S. Steel and the Industrial Recovery Act	242
A. Effect of N. I. R. A. upon labor in U. S. Steel	242
B. Steel adopts Code of Fair Competition and raises wages	243
C. Status of labor in steel before the Code of Fair Competition	244
D. Adjustment of the operators and workers to the Code	244
E. Beginning of a new labor policy in U. S. Steel	245
F. Demand upon steel's organization made by the Code	245
G. The Code as an experiment in industrial self-government	246
H. Inadequacy of the Code	246
I. U. S. Steel recognizes collective bargaining	248

CHAPTER VIII

METHODS OF PREVENTING AND SETTLING LABOR DISPUTES

I. Some techniques of settling labor disputes	249
A. Compulsory industrial arbitration	249
1. The Kansas Act	249
2. Authority of the Kansas Industrial Court	249
3. Effect of awards	249
4. Court grows in disfavor	250
5. Labor's objection to the court	250
B. Compulsory investigation with voluntary acceptance of awards	251
1. The Colorado Act	251
2. Success of the Colorado Act	252
C. The National Labor Relations Act	252
II. The effect of strikes upon the community	252
A. Relation of the state to labor disputes	253
1. The Walsh-Healy Act	254
B. Loss of wages to the community	254
C. Social consequences of a strike	256

	PAGE
D. Abrogation of civil liberties	257
E. Violence and resort to legal procedure	261
III. The Wagner Act	266
A. The attitude of labor toward legal process	267
B. Unions' rights and responsibilities	267
IV. The turning point in social legislation	268
A. The Minimum Wage Law	268
B. The National Labor Relations Act	270
C. The Social Security Act	268
D. The Railway Labor Act	269
V. The government's right to regulate industrial relations in inter- state business	270
A. Commerce defined	271
B. Strikes and interstate commerce	272
VI. The National Labor Relations Act	270
A. The National Labor Relations Board and its importance	271
1. Defines "unfair" labor practices	272
2. Encouragement to collective bargaining	273
3. No discrimination as to unions	273
4. Reinstatement	273
5. Back pay for unjust dismissal	274
VII. The National Labor Relations Board and Republic Steel, Inc.	274
VIII. The Success of the National Labor Relations Board	275
A. Number of cases handled	275
B. Changes brought about by the N. L. R. B.	276
IX. The State Labor Relations Board	277
A. Policy of the New York State Board	277
X. The New York State Mediation Board	277
XI. Strikes and public interest	278

CHAPTER IX

EMPLOYEES' REPRESENTATION AS A MEANS OF PREVENTING INDUSTRIAL DISPUTES

I. Industrial Representation Plans as means of establishing a labor policy	279
A. United Mine Workers of Colorado	280
1. Strike of 1904	281
2. Strike of 1910	281
3. Success of the strike of 1913	281
4. Demand of the unions	281
5. National Guards to the strike district	282
6. Investigation of the militia	282
7. The Ludlow massacre	282
8. Federal troops sent to Colorado	283

	PAGE
B. The plan of mediation	283
C. Conciliation commission appointed	283
D. The plan of Mr. Rockefeller	284
1. Establishment of direct relationship between man- ager and employees	284
2. Extent of the plan	284
3. The plan's constitution	285
4. The weakness of negotiation	288
5. Conference as a gain for labor	289
6. None of the principles of collective bargaining embodied	291
7. Shortcomings of the plan	292
8. The plan and trade unions	292
E. The Plan of Dutchess Bleachery, Inc.	293
1. Partnership	293
2. Representation	293
3. Board of Managers	294
4. Successful at Dutchess Bleachery, Inc.	294
F. Proctor and Gamble's trial of the Dutchess plan	294
1. Failure of plan	295
G. Standard Oil's trial of the Dutchess plan	295
H. The Representation plan applied to Filene and Good- year Tire and Rubber	295
1. Value as a social welfare project	296
2. Plan's need for less rigidity	296
II. Employees' Representation Plan breaks down	296
A. Not an instrument for elimination of strikes	296
B. Need for adequate sponsorship and leaders	396
C. Unsatisfactory substitute for union	296
D. Workers have little opportunity to improve status . .	297

CHAPTER X

THE ROLE PLAYED BY THE GOVERNMENT IN INDUSTRIAL DISPUTES

I. Government intervention as a means of settling industrial disputes	298
A. Enforcing agreements	299
B. Negotiating labor contracts	299
1. Higher wages	299
2. Improved working conditions	299
3. Greater security	299
C. The National Labor Relations Act	299
D. The Social Security Act	299

	PAGE
II. Organized labor in Steel	300
A. The elimination of unions	300
B. Recognition of the C. I. O.	300
C. Steel as a key industry	300
D. Standard of living in steel	302
E. Under-employment in steel	303
F. U. S. Steel signs with C. I. O.	303
G. Labor distrusts steel management	303
H. Recognition of need for organization in steel	303
I. Part played by public opinion	304
III. Strikes that directly affect the public	305
IV. The purpose of legislation	305
A. Public intervention	305
B. Public investigation	305
C. Acts protecting the worker	306
V. The strike and the state	307
VI. Government workers and the right to strike	308
A. Political aspect of government employees	309
B. The doctrine of complete state authority	310
C. Some government employees and the right to strike	310
D. The state as a "neutral"	311
E. The state and the <i>status quo</i>	312
F. The government worker as citizen and employee	312
G. The government as employer and as public authority	313
H. Unions in government	314
I. Civil servants regulated by legislation	316
J. The Lloyd-LaFollette Act	317
K. The law of conspiracy and postal clerks	318
L. Uncertain status of the civil servant	319
M. Government refuses to bargain with employees	321
VII. Advantages of boards of arbitration	322
A. Labor and industry profit	322
B. Joint arbitration committees	322
C. Arbitration and the building trades	323
D. Arbitration and industrial peace	324
VIII. The Wisconsin Labor Board	324
IX. The New York Arbitration Law	325
X. Strike breaking and its technique	325
A. The history of strike breaking	326
B. Pinkerton and strike breaking	326
C. Detective agencies and strike breakers	326
D. The cost to industry of strike breaking	327
E. Law and strike breakers	328
XI. The federal government emphasizes legislation	329

CHAPTER XI

CONTEMPORARY AND FUTURE NEED FOR SOCIAL LEGISLATION

I. Public attention focused on labor problems	334
A. N. I. R. A.	334
B. Executive orders	334
1. Longshoremen's Board	334
2. Steel Board	334
C. The Guffey and Wagner Acts	334
D. Attitude of business and of government	334
E. Dissension in organized labor	335
1. Attitude of A. F. of L.	335
2. Attitude of C. I. O.	335
II. The need for national legislation	335
A. The need for peaceful adjudication	336
1. Industrial difficulties	336
2. Economic and political difficulties	336
3. Governmental difficulties	336
B. The intervention of the machine	336
C. The problem of security of livelihood	336
D. Early national legislation	337
1. The Sherman Act	337
2. The Clayton Act	337
3. The Railway labor legislation	337
E. Contemporary legislation	337
1. The Guffey Coal Act	337
2. The Social Security Act	337
3. The National Labor Relations Act	337
III. Deficiencies of our National Legislation	337
A. Must the Wagner Act be amended	337
1. Features of Act under question	338
2. N. L. R. B. and British labor status	339
3. Need for special labor courts	340
B. Wagner Act first real intervention	341
1. Value of labor exchange offices	341
2. Unemployment insurance and retirement	341
3. Minimum wage and maximum hours	341
C. National health and inadequate medical services	342
1. National health	342
2. American way	342
3. Child labor law	342
IV. Need for national legislation regulating child labor	343
A. Contribution of Fair Labor Standards Act	343
B. Evolution of child labor bills	343
1. Beveridge-Parsons	343
2. Senator Lodge	344

	PAGE
3. Kenyon Bill	344
4. Copley-Poindexter	344
5. Palmer-Owen	344
6. Keating Owen	344
C. Proposed amendment	345
D. State inadequacy	346
V. Development of labor legislation	346
A. Division of powers	347
B. Unconstitutionality of labor law	348
C. Hours limitation	349
D. Minimum wage	350
1. Different standards for men and women	350
E. Fair Labor Standards Act	351
1. Machines	352
2. Decentralization of industry	352
VII. The Report of the President's Commission on Industrial Relations in Great Britain	353
A. Social Legislation in England	353
1. Medical care	354
VIII. The Report of the President's Commission on Industrial Relations in Sweden	355
A. Social Legislation in Sweden	355
INDEX	363

INTRODUCTION

THE writer's interest in industrial disputes began as an undergraduate when by chance he witnessed for the first time a miners' strike outside the city of Birmingham, Alabama. The author was impressed by the fact that here were groups of men who not only did not want to work themselves but objected to anyone else's working. The economic philosophy "that if a laborer doesn't want to work, he can quit," was at that time clear in the writer's mind. The additional impression gained from this incident was the apparent lack of any legal agencies of control. These men, both the strikers and the strike breakers, seemed to be of necessity engaged in a miniature civil war. These interests carried over into my graduate studies, with additional emphasis gained in courses in social legislation, the community, and public law. In 1934 further information was gained by a summer spent in Harlan County, Kentucky.

In many ways I am glad that this study of federal legislation, which deals in particular with four great industries attempting to meet the problems of a changing world industrial system, can appear at this time. It is perhaps true that both the industrialist and the employee are today more willing to consider the foundations of national security in terms of human welfare. At this time, too, more minds are putting their best thought upon the conditions and success of democratic government than in any previous time of our history.

This is important because we can better understand our weakness and our strength when we see more clearly the clash of ideals which is revealed in our industrial and political and national life. This understanding was never more needed simply because now the first steps are being taken to direct our national industry by cooperation rather than by industrial warfare. If reason and justice fail within the national community, they are certain to be defeated in the local states.

The thirty-nine years covered in this study have been revolutionary in their effect upon the employer, employee, the general

public, and upon the working of their government. This period is very important in judging the development of the political and industrial labor movement in our modern democracy, for it shows what the security of the wage earner has meant in changing old social and governmental institutions. In a sense it is a record of what the common man has thought of his working conditions and his judgment of the society in which he has been living. Within our national life there has been a growing consciousness demanding a security for the worker not provided for in the old forms and by old institutions. The World War, 1917-18, left deep furrows in our national life; and from the resulting changes made by industry for military consumption a new order of production developed, giving the modern state a duty to reorganize its economic and social life on a new basis.

This study surveys primarily the federal legislation of the twentieth century dealing with the industries named, but it is obvious that social legislation cannot be divided nicely into either historical periods or particular industries. This seems an especially sound view to take when the legislation on industrial questions in the United States is to be studied. For the genius of the democratic method seems to lie in the gradual evolution of social thought, each generation making plainer its will. Our industrial codes of the present time, in all their detail and complexity, had at least to some extent their beginning in the factory legislation of England, and the security legislation of Bismarck's Germany. The aim behind our national legislation, whether it was safety, social security, or well-being generally, has had to be realized slowly within an industrial system which could be changed only as men were convinced that it should be changed. Then there followed that slower process of changing the ideas of men about their government; that process is going on at this time. Therefore, this study, though it deals primarily with a definite number of years, provides a survey of the federal labor legislation covering the industries selected from 1900 to 1939. Furthermore, it takes into account the

application of the machinery of government to changed social and economic conditions as a means for adjusting its complex industrial organization.

While this study of federal legislation affecting industrial disputes deals chiefly with the period of 1900-1939, yet in many of its incidental aspects it covers more than a half century, beginning with the Interstate Commerce Act (1887) extending through the Fair Labor Standards Act of 1938 and the amendment of the Social Security Act of 1939. Federal legislation has been only a small part and until recently a relatively unimportant part of governmental action in dealing with industrial disputes; state legislation and judicial action in applying the principles of the law not embodied in statutes have played the larger role. But the time has come when the unifying action of federal authority has become necessary in our complex and interdependent community of states in order to supplement, not supplant, state and local regulation.

The dual nature of our government—federal and state—with different spheres of action, each supreme and independent, has made it difficult to legislate, both by national and state governments. This dual nature is probably the hardest feature to grasp but it is, nevertheless, one of the most important. Besides this dual nature of our government, under the Constitution of the United States and the state constitutions the courts have the last word as to whether a statute is within the power of the law-making body and therefore valid. With their wide powers to invalidate statutes under vague and general provisions of the Constitution, the courts can render the products of the legislators ineffective, even after immense labor and effort have been expended upon them. In many instances not even the most careful examination of decided cases or a most thorough study of the principles of constitutional law will make it possible for the legislator to be sure that his law will be accepted by the judge as constitutional. Thus, to the difficulty of determining the wise thing to do in an important social situation is added

that of fitting the solution to the accepted principles of constitutional law, both federal and state.

Let us take, for example, some of the laws passed by both the state and federal governments which have been held to be unconstitutional. Some of the earliest state attempts to regulate the railroad industry by law were undermined by the *Wabash* decision.¹ This decision laid down the principle that no state could adopt regulations affecting the movements of commerce among the different states. Of equal importance, however, are the laws passed by the federal government which have been held to be unconstitutional. In 1916 a law which was expected to prevent the employment of children under fourteen years of age and otherwise regulate child labor was passed by Congress under the authority to regulate interstate commerce and as part of such regulation. The law was held to be unconstitutional in 1918 on the basis that it was not within the authority of Congress to prohibit the interstate transportation of goods on which children under fourteen years of age had worked.²

In 1919 Congress repassed this child labor law, with the same end in view, under the taxing power. This, too, was declared unconstitutional on the ground that it was not a legitimate use of the taxing power but served only as a penalty.

The history of our minimum wage laws serves as a further illustration to bring out the conflict and influence of state and federal legislation. In public employment it has been frequently decided that the legislature may rightfully regulate wage rates as well as other conditions of labor. The legality of state regulation of wage rates in private employment has had a less certain history.

Not until 1914, when the United States Supreme Court left in force a previous decision of the Oregon Supreme Court in favor of the state's minimum wage law, did the question seem

¹ *Wabash, etc., Railway Co. v. Illinois*, 118 U. S. 557 (1886), discussed in Chapter VI of this work.

² *Hammer v. Dagenhart*, 247 U. S. 251 (1918). See Chapter VIII for a discussion of legislation regulating child labor.

settled.³ Favorable verdicts were also handed down by the Supreme Courts of Arkansas, Massachusetts, Minnesota, and Washington.

Meanwhile the minimum wage law of the District of Columbia had come before the United States Supreme Court, and that body had rendered an adverse opinion.⁴ In 1925 the Arizona law came to the Supreme Court, which merely submitted a memorandum holding that it was bound by the *Adkins* Case.⁵ In 1927 the Supreme Court rendered a similar adverse decision on the Arkansas law.⁶ Following the *Adkins* case many state and federal courts followed that decision. As late as March, 1936, the highest court of New York invalidated that state's minimum wage law of 1933. The United States Supreme Court likewise ruled the New York law unconstitutional on the basis of the *Adkins* case.⁷ While the Court was preparing this decision, the Washington State Supreme Court handed down an opinion upholding that state's minimum wage law of 1913.⁸

When an appeal was taken from this decision to the United States Supreme Court, that Court was moved to reconsider the principles laid down in the *Adkins* case. The result was a complete reversal of the earlier ruling that had been followed since the *Adkins* case.⁹

In the discussion of federal legislation an attempt has been made to analyze the laws and give some account of the conditions and influences that led to their passage, as well as of their practical operation. For the most part, attention is confined to federal legislation, but in some cases an analysis of certain state legislation has been necessary in order to under-

3 *Stettler v. O'Hara*, 69 Ore. 519, 139 Pac. 743 (1914), 243 U. S. 629 (1917).

4 *Adkins v. Children's Hospital*, 261 U. S. 525, 43 Sup. Ct. 394 (1923).

5 *Murphy v. Sordell*, 269 U. S. 530, 46 Sup. Ct. 22 (1925).

6 *Donham v. West Nelson Mfg. Co.*, 273 U. S. 657, 47 Sup. Ct. 343 (1927).

7 *Morehead v. People ex re Tipaldo*, 56 Sup. Ct. 918 (1936).

8 *Parrish v. West Coast Hotel Co.*, 55 Pac. (2nd) 1083 (1936).

9 *West Coast Hotel Co. v. Parrish*, 300 U. S. 379 (1936).

stand the meaning and effect of the national law. Also, this study has dealt chiefly with labor problems and legislation in the United States, although some reference is made to the legislation of Australia and Canada for the sake of comparison and contrast.

Some attempt will be made to discuss the problems presented from the standpoint of the pressure of labor, the extent of employer organization, social and economic conditions involved, political machinery employed and the collective responsibility generally recognized and accepted.

Contemporary industrial disputes and attempted legislation to remedy the situation have again given special prominence to the whole matter of the legal status of labor and industry.

If further evidence was really needed, the experience of American industry of the last few years must have convinced thoughtful men throughout the country that industrial-labor relations definitely should be regulated by law. The problem is more widespread and the difficulties more acute. Recently labor has followed the example of capital and now has an economic and political program. Each year labor extends its activities further into politics.

We have grown accustomed to the idea of capital as a political and social force, but while the growth of labor as such a force has not perhaps been so apparent it is no less real. Labor is now claiming a voice in national councils and insisting upon a voice in formulating policies of national import. It has discovered that its security and the maintenance of high standards of living depend upon a universal organization. Labor, therefore, seeks to use its growing influence in national politics in the attainment of that end.

On the other hand, the men who after each industrial war saw its futility, have endeavored to construct a policy of industrial peace. They saw the close connection existing between world peace and an industrial one; and that industrial peace like world peace can be established only if it is based upon

social justice. That degree of justice, however, did not seem attainable without federal intervention in industrial relations.

Moreover, as industrial strife was to be averted by a method of discussion and honest investigation, so social justice was to be promoted; labor conflicts were to be avoided through a policy of cooperation between labor, capital and government, periodically defining and restating their respective rights and duties to and through disinterested national agencies.

Finally, the development of national trade and interstate commerce demanded that the cooperation should be national and should be expressed in the terms of national legislation. Out of this grew the National Labor Relations Act and the Railway Labor Acts. These, briefly outlined, are the various currents which have given rise to the National Labor movement.

The present national labor policy seeks to promote the adjustment of labor conditions and to do generally in the field of labor economics what the national government has been doing in other fields of national regulation. It hopes to bring together in a spirit of friendly cooperation representatives of capital and employers, labor and workers, and the public.

Some of the national laws, particularly in transportation, have stood the test of time and have already built a background of achievement. Such enactments are steadily increasing in importance and influence. The program of national labor legislation as embodied in the National Industrial Recovery Act, the Social Security Act, the National Labor Relations Act, and the Fair Labor Standards Act of 1938, as well as other acts relating to railroad labor and coal industry, represent one of the most significant steps in the history of industrial relations in the United States. From the legislative and judicial point of view, this study is more or less exhaustive; whereas from the standpoint of labor disputes it has been necessary to limit the scope to the more typical American industries, such as the railroads, coal, steel, and automobile industries, and in point of time to the period from 1900 to 1938. These industries were chosen

because one represents a long-standing company-union industry; another, a highly unionized industry; while the railroads represent an industry highly regulated under the interstate commerce powers of the federal government and the automobile industry one that is comparatively new and for the most part prosperous under the domination of private enterprise with little government interference.

The evolution of a national labor policy finding expression in much recent labor legislation has necessarily been considered; and it is hoped that this study may contribute to an explanation of why labor has officially entered upon a national stage of development, and something of the sociological and political background, the genesis, structure and achievement of a nationwide cooperation between labor, capital and government.

For some time the author has been interested in legislation, both national and state, as a means of settling industrial disputes. The method used, however, has evolved for the most part around federal legislation. The source material has been gathered from state and national statutes, presidential orders, and state, federal and United States Supreme Court decisions. Also, annual and quarterly reports from the Board of Directors of the United States Steel Corporation have been used. The reports of special commissions have been utilized especially in the case of coal. *The Legislative Review and Summaries*, published quarterly by the American Association for Labor Legislation were used in this study and will serve to continue their utility as new legislation occurs. It must be noted that the substance of the law and not provisions for enforcement is primarily presented in this study. Statistics have been used only for comparison and contrast of numbers of employees involved at a particular time or the amount of time or money losses to labor, industry and the general public.

The treatment of this subject has encountered two embarrassments: first, the unavailability of private papers of statesmen and industrial leaders; second, the difficulty of securing

a correct perspective in viewing events so recent as much of our federal labor legislation.

This study aims to give a clearer understanding of the development and present position of federal legislation as a preliminary to further improvement of the law and its administration. It does not pretend to give a complete survey, nor does it make an attempt at formulating a social program. But the approaches to a difficult problem here made, from the historical, comparative, and critical sides, seemed not only worth making as a part of an apprenticeship in legislative investigation but were of such value that they are worth printing for the use of others who may be studying the same problem. A foundation tessellated, but firm so far as it goes, is here laid for further ameliorative, constructive work in national legislation as a means of preventing industrial disputes.

Acknowledgment is here made of the courteous assistance of the United States Department of Justice, the Department of Labor, the National Mediation Board, and the officers of both the Committee for Industrial Organization and the American Federation of Labor. Especially to Dr. Samuel McCune Lindsay, in whose research seminar the author developed additional interest in social legislation, perhaps more than to any one person his thanks are due. Many of the suggestions embodied in the manuscript originated with Doctor Lindsay, and without his patience and care the work would probably not have been finished.

T. R. F.

CHAPTER I

THE PROBLEM OF INDUSTRIAL DIS- PUTES IN MODERN INDUSTRIAL SOCIETY

ALMOST up to the beginning of the twentieth century, it would have been regarded in America as an unwarranted interference in private affairs for the federal government to intervene in aiding the establishment of wage rates, hours of labor, and conditions under which a worker would work. However, three entirely separate and distinct factors gave rise to governmental attempts at regulation of these conditions. One of these was the sweatshop evil; another was the stoppage of work, with the injuries to the public resulting from strikes and other forms of industrial conflict; and the third was the general economic depression which started in 1929.

New Zealand's Conciliation and Arbitration Act of 1894. New Zealand was the first state to endeavor to solve the second evil by enacting her industrial Conciliation and Arbitration Act of 1894. Although it was often amended, New Zealand's Act remained primarily an attempt to prevent strikes and lockouts. This Act of 1894 provided for the division of the Dominion into eight districts. Each district had a Board of Conciliation and all eight were then combined under a Court of Arbitration for the whole Dominion. In order to submit a dispute, the employees had to form a union. A union could be formed by seven men. Disputes could be brought before either the Boards of Conciliation or directly to the Court of Arbitration and the procedure before both was judicial in form. Although this Act pertained to industrial matters, one finds that the term "industrial matters" included wage regulation to some degree, for the following were included in the scope of the law:

1. Wages, allowances or remuneration for workers employed in any industry, or the prices paid, or to be paid, therein, in respect to such employment.
2. The hours of employment, sex, age, qualifications or status of workers and the mode, terms and conditions of employment.
3. The employment of children or young persons, or of any person or persons or class of persons in any industry, or the dismissal of or refusal to employ any particular person or persons or class of persons therein.
4. The claim of members of an industrial union of employers to preference of service from employed members of an industrial union of workers.
5. The claim of members of industrial unions of workers to be employed in preference to non-members.
6. Any established custom or usage of any industry, either generally or in the particular district affected. "Industry" means any business, trade, manufacture, undertaking, calling for employment in which workers are employed.

While the Act strove to meet the difficulty of strikes and lock-outs, it also provided for elimination of low wages, long hours, and unsanitary conditions, the three outstanding evils of the sweatshop trades and the great sources of labor dissatisfaction and unrest.

Wage Board system adopted by Victoria and Tasmania. Although the Commonwealth of Australia as a whole adopted the Industrial Arbitration Courts system, Victoria and Tasmania adopted the Wage Board system, while New South Wales and South Australia combined the two systems.

The field for hearing under the Wage Board system included wages, hours, overtime, and apprenticeship provisions:

The special Board shall take into consideration the following matters and may (if it thinks fit) fix different prices or rates according to (1) The nature, kind, and class of work; (2) The mode and manner in which the work is to be done; (3) The age and sex of the worker; (4) The place or locality where the work is to be done; (5) The hour of the day or night when the work

is to be done; (6) Whether more than six consecutive days' work is to be done; (7) Whether the work is casual as defined by the Board; (8) Any recognized usage or custom in the manner of carrying out the work; (9) Any matter whatsoever which may from time to time be prescribed.¹

It is obvious that this law helped to strike a severe blow at the sweatshop evils which existed in the industries of that state and to give the laborer at least a minimum of security. At first the Act was limited in application to six trades in which the sweatshop evils were most prominent, but later the law was extended and became a general minimum wage law, thus systematizing collective bargaining in a great number of trades.²

Great Britain and Wage Boards. Great Britain adopted the system of Wage Boards as established in Victoria and provided the necessary administrative machinery. Separate Boards were set up for different trades and these rendered decisions for the trades which they represented.³ In general, the activities of these Boards corresponded with those in Victoria. From all reports, their work has been satisfactory and, although some protest against these Boards, they would not tolerate the return to the days of the sweatshop prevalent under the old system. In recent years, there has been a curtailment in the activities of the Boards and the law has not been extended to new trades, due to the present economic depression.

1 Victoria Factories and Shops Act, 1912, Sec. 141.

2 Hammond, M. B., "The Minimum Wage in Great Britain and Australia," *Annals of the American Academy of Political and Social Science*, July, 1913, Vol. 48, p. 28; also the Hammond articles in *Quarterly Journal of Economics*, 1914, Vol. 29, pp. 98-148, 326-361, 563-630; articles by Selles, Dr. Dorothy McDaniel, *International Labor Review*, 1924, Vol. 10, Nos. 4, 5, 6, pp. 607-629, 779-799, 962-1004; and Armstrong, Barbara Nachtrieb, *Insuring the Essentials*, pp. 124-141.

3 International Labor Office, *Studies and Reports*: 1927, Series D, No. 17, "Minimum Wage-Fixing Machinery"; 1939, Series D, No. 22, "The Minimum Wage, an International Survey"; 1933, Series A, No. 34, "Conciliation and Arbitration in Industrial Disputes." See also International Labor Office *Yearbooks*, 1930 to date.

United States and minimum wages for women and children. The United States followed the lead of the above-mentioned countries in the passage of minimum wage laws, but in this country greater emphasis has been placed upon the problem of wages of women and minors. This was probably due to the fact that legislators were firm in their conviction that any measure applying to men also almost certainly would be unable to withstand attack in the courts. The same causes which stimulated activity for legislation in New Zealand, Australia and Great Britain brought about the enactment of laws on this continent to abolish low wages, as well as the sweating evil.

Early attempts by the states. Massachusetts passed the first minimum wage law in this country in 1912; then came California, Colorado, Minnesota, Nebraska, Oregon, Utah, Washington, Wisconsin in 1913; Arkansas and Kansas in 1915; Arizona in 1917; the District of Columbia in 1918; North Dakota, Porto Rico and Texas in 1919; and South Dakota in 1925.

In the United States, laws have been broad in scope, generally covering hours, wages, and conditions of labor for both women and minors. They have been of three kinds: (1) as in Utah and Arizona, where a definite minimum wage rate is fixed by the state legislature; (2) as in Massachusetts, where the rates are fixed by a commission after hearings and recommendations by conferences, and the decision is enforced by the power of public opinion; (3) as in Oregon, where the wage rates are determined by the same procedure as is used in Massachusetts, but where they are mandatory and enforced by legal penalties.

Early philosophical thought and wages. The question of wages and how they are regulated is interesting but difficult to answer definitely. The economists have made their contributions and whether or not we accept them, we must consider them in any discussion of wages, labor, and general social conditions.

Hegel stated that progress in human thought is made by the recurrent process through which a thesis is met by an antithesis, and the two result in a synthesis which in turn becomes the basis for a new theoretical cycle. Three successive economic interpretations of wage principles illustrate this philosophic concept. Ricardo and Malthus, in the early part of the nineteenth century, gave us one of the earliest interpretations: the theory known as the "Iron Law" of wages. They based their argument on the principle that the wages of labor always tend toward the minimum of subsistence necessary for the laborer's family. Thus a wage, below the amount necessary for subsistence, tends to increase the death rate and decrease the birth rate and results in a scarcity of labor. Industry, in order to survive, is forced to increase wages gradually. As wages rise, the birth rate increases and the death rate falls until there is again an excess of labor, which is reduced through the "niggardliness of nature," and the cycle is completed. Such fatalism could not be accepted for long and gave way to another interpretation, that of the Wage Fund Theory.

The Wage Fund Theory. The Wage Fund Theory was accepted by the greatest thinkers and authorities of the middle period of the nineteenth century. John Stuart Mill, prolific and expressive writer stated: "Wages not only depend upon the relative amount of capital and population, but cannot under the rule of competition be affected by anything else. Wages cannot rise but by an increase in the aggregate funds employed in hiring laborers or a diminution of the number of competitors for hire, nor fall except either by a diminution of the funds devoted to paying labor or by an increase in the number of laborers to be paid." ⁴

Economic principles of diminishing returns. This theory, though inadequate, persisted until the latter part of the nineteenth century when the present Productivity Theory, or a modification of the same, appeared on the horizon

⁴ *Principles of Political Economy*, 1848, Book II, Chapter 2.

of economic thought. This theory covers the entire field of distribution in economics. Here the principles of diminishing returns and marginal or final utility are brought into play. John Bates Clark, whose name is associated with this theory as its sponsor, says: "The law of wages would stand thus: (1) By a common mercantile rule, all men of a given degree of ability must take what marginal men of the same ability get. This principle fixes the market rate of wages; (2) Marginal men get what they produce. This principle governs wages more remotely, by fixing a natural standard for them. . . . Each unit of labor, then, is worth to its employer what the last unit produces," and more summarily stated, "as real as gravity is the force which draws the actual pay of men toward a standard which is set by the final productivity law."⁵

Inadequacies of theories. These theories give no satisfaction. The first one discussed promises the worker starvation; the second assures him that he will get as little as the employer can get away with giving him and therefore he will have to fight for everything he gets; and the third theory reveals to the worker that if the population increases, thus throwing more men into his particular field of endeavor, the marginal product will be less and his wages will necessarily be less. This has led thinkers to try to overcome the situation by establishing a new basis for wage adjustment. Almost without exception the all-important question arises—what is a living wage and how are men to obtain it? The term includes such elements as welfare, comforts, conditions of reasonable life, morals, decent maintenance, conditions consistent with welfare which, when embodied into a principle, lead to the consideration of a minimum wage law. This law, as has been pointed out, is now founded in various jurisdictions in the United States.

Tied into practically all labor disputes is the problem of wages and security. What constitutes a minimum wage?

⁵ Clark, John Bates, *The Distribution of Wealth*, 1899, Chapters VII and VIII.

Difficulties of a minimum wage law. Economists have differed in opinion as to the beneficial effects to be expected from minimum wage legislation. Some have thought that a legal minimum wage would increase the efficiency of the workers by enabling them to have better medical care, warmer clothing, and more nourishing food, and by compelling society to provide a more practical system of industrial training. Others have thought that instead of a sum-total increase of efficiency there would be a decrease, due to the fact that there would be a leveling down of wages. However, the majority have agreed that a minimum wage law would be beset with some of the following difficulties:

1. Political difficulties due to the opposition of large interests and of organized labor (especially if minimum wage legislation were adopted for men).
2. Difficulties arising through those unable to earn the prescribed minimum who would eventually find themselves in the ranks of the unemployed and unemployable.
3. Such legislation might impair the efficiency of the better paid workers.
4. The constitutional difficulty, which, it was contended, would be greater in the case of men than of women and minors.

Regardless of the difficulties which the economist anticipated, several states and the District of Columbia passed different types of legal minimum wage laws.

The question of legal minimum wage. Almost all of these laws have come to the attention of the various State Supreme Courts. They are, however, too numerous to be reviewed in detail in this study. The District of Columbia's legal minimum wage law came up before the United States Supreme Court in 1922. The decision as to the law's constitutionality was determined in 1923, and the attitude of the United States Supreme Court towards the feasibility or unfeasibility of a legal minimum wage was established. The Constitution, although it protects a person from being deprived of "life", "liberty", or

"property", without due process of law, does not define "due process of law" and the Supreme Court has not given us any definite statement as to when an act is in accordance with this term. However, the United States Supreme Court has let it be understood that the exercise of the police power in a reasonable manner is not intended to be prohibitive. Yet the determination of what is reasonable appears to be a matter of opinion subject to the personal equation of the judges sitting at the time. This seems to be especially true when it comes to social legislation (particularly labor legislation, where the judges' social and economic beliefs come to the surface) because then the social theories of the judges come in conflict. Some believe that society should exist for the benefit of the individual, while others are of the opinion that the individual should exist for the good of the Great Society.

Productivity Theory of Wages. Though the Productivity Theory of Wages is dominant in our economic and industrial society, it is always affected by the laissez-faire doctrine of "let business alone and it will function best." This philosophy appears to have permeated the atmosphere in which the United States Supreme Court Justices reside and work. It was especially true in the case of *Adkins v. the Children's Hospital of the District of Columbia*, which will be considered in more detail later. Prior to the time this case came to the Supreme Court for consideration, the Court had only once before been called upon to determine the constitutionality of a minimum wage law and at that time no opinion was filed because the Court was equally divided.⁶ Thus, in the *Children's Hospital* case, the Court had an opportunity to make a real contribution; however, it predicated its decision primarily upon the ground that there was an unconstitutional interference with freedom of contract, which is well established and protected under the "due process" clause.⁷ The right of freedom of

6 *Stettler v. O'Hara*, 242 U. S. 629 (1917).

7 *Allgeyer v. Louisiana*, 165 U. S. 579; *Adair v. U. S.*, 208 U. S. 161 (1908); *Coppage v. U. S.*, 23 U. S. 14 (1827).

contract has also been jealously guarded by the various State Courts.⁸ Yet the Supreme Court has held and recognized that the State could, through its police power, infringe somewhat on freedom of contract, as by limiting the hours of labor in mines⁹ and forbidding the employment of any person in any mill, factory, or manufacturing establishment beyond ten hours a day and allowing three hours' overtime at a time and a half of the regular wage.¹⁰

This would seem to indicate that the Court, in spite of its efforts, has not always been able to adhere to the *laissez-faire* doctrine. It is, therefore, difficult to see why the Court considered the District of Columbia case any more of a violation of freedom of contract than the cases of *Holden v. Hardy*, (169 U. S. 366) or *Bunting v. Oregon*, (243 U. S. 426). In the *Bunting* case, however, the Court found refuge in the fact that the overtime rate applied to all persons, while in the *Holden* case the Court said: "The fact that both parties are of full age and competent to contract does not necessarily deprive the State of the power to interfere where the parties do not stand upon an equality or where the public health demands that one party to the contract shall be protected against himself. 'The State still retains an interest in his welfare, however reckless he may be. The whole is not greater than the sum of all the parts, and when the individual health, safety and welfare are sacrificed or neglected, the State must suffer.'"

The District of Columbia and freedom of contract. The District of Columbia case considered in more detail may reveal the reason why the Supreme Court of the United States held that the law in question was a violation of freedom of contract. Mr. Justice Sutherland, who wrote the majority opinion, after stating the facts of the case¹¹ at once relates that "this

8 *People v. Marcus*, 186 N. Y. 257 (1906); *Ransey v. People*, 142 Ill. 380 (1911); *Godcharles v. Wiseman*, 113 Pa. 431 (1886).

9 *Holden v. Hardy*, 169 U. S. 366 (1898).

10 *Bunting v. Oregon*, 243 U. S. 426 (1917).

11 *Adkins v. Children's Hospital*, 261 U. S. 515 (1923).

court, by an unbroken line of decisions from Chief Justice Marshall to the present day, has steadily adhered to the rule that every possible presumption is in favor of the validity of an Act of Congress until overcome beyond rational doubt. But if by clear and indubitable demonstration a statute be opposed to the Constitution, we have no choice but to say so."

Due process as protected by the Fifth Amendment. The next consideration in the opinion appears to be "that the right to contract about one's affairs is a part of the liberty of the individual" protected by the due process clause of the Fifth Amendment. Justice Sutherland admits, however, that "there is no such thing as absolute freedom of contract" because "it is subject to a great variety of restraints." "But," the Justice claims, "the freedom of contract is nevertheless the general rule and restraint the exception and the exercise of legislative authority to abridge it can be justified only by the existence of exceptional circumstances."

In order to help to determine whether or not circumstances exist which would justify classifying the law under review as an exception to the general rule, the Court considers a number of cases,¹² and concludes that these all furnish exceptions to the general rule forbidding legislative interference with freedom of contract.

Claims used by the Court. The Court claimed, however, that the law under consideration does not conform to these exceptions in that "It is not a law dealing with any business charged

¹² *Munn v. Illinois*, 94 U. S. 1113; *Louisville and Nashville Railway Company v. Mottley*, 219 U. S. 467; *Atkin v. Kansas*, 191 U. S. 207; *Heim v. McCall*, 239 U. S. 175; *Ellis v. U. S.*, 206 U. S. 246; *McLean v. Arkansas*, 211 U. S. 539; *Knoxville Iron Company v. Harbinson*, 183 U. S. 13; *Erie Railway Company v. Williams*, 233 U. S. 685; *Holden v. Hardy*, 169 U. S. 366; *Lockner v. New York*, 198 U. S. 45; *Bunting v. Oregon*, 243 U. S. 426; *Wilson v. New*, 243 U. S. 332; *Block v. Herish*, 246 U. S. 135; *Marcus Brown Holding Company v. Feldman*, 256 U. S. 170; *Muller v. Oregon*, 208 U. S. 412; *Riley v. Massachusetts*, 232 U. S. 671; *Miller v. Wilson*, 236 U. S. 373; *Bosley v. McLaughlin*, 236 U. S. 385. See *Adkins v. Children's Hospital*, *ibid.*

with a public interest, or with public work, or to meet and tide over a temporary emergency. It has nothing to do with the character, methods, or period of wage payments. It does not prescribe hours of labor nor conditions under which labor is to be done. It is not for the protection of persons under legal disability or for prevention of fraud. It is simply and exclusively a price-fixing law confined to adult women . . . who are legally as capable of contracting themselves as men." Justice Sutherland, his words would indicate, has arrived at the conclusion that the case presented a new constitutional issue not settled by any precedents.

Objection to price fixing. Mr. Sutherland's main objection to the minimum wage is that it is price fixing "with no relation to the capacity or earning power of the employee, the number of hours which may happen to constitute the day's work, the character of the place where the work is done, or the circumstances or surroundings of the employment," and "it takes no account of any independent resources she may have."

Standard of living and services. The Justice pushes the argument a little further in justifying the Court's right to hold the statute void because of its indefiniteness when he says, "The standard furnished by the statute for the guidance of the board is so vague as to be impossible of practical application with any reasonable degree of accuracy. What is sufficient to supply the necessary cost of living for a woman worker and maintain her in good health and protect her morals is obviously not a precise or unvarying sum—not even approximately so. The amount will depend upon a variety of circumstances: the individual temperament, habits of thrift, care, ability to buy necessities intelligently, and whether the woman lives alone or with her family. To those who practice economy, a given sum will afford comfort, while to those of contrary habit the same sum will be wholly inadequate."

Health of the employee no concern of employer. Linked up with the above argument that the standard of living may exceed the value of the services is the further assertion that the need of the employee to live in health is no concern of the employer. This assumed excess is a "compulsory exaction from the employer for the support of a partially indigent person for whose condition there rests upon him no peculiar responsibility." "The declared basis is not the value of the service rendered, but extraneous circumstances that the employee needs to get a prescribed sum of money to insure her subsistence, health and morals." From this, one may say that there is no more justification for compelling an employer to pay on the basis of the needs of the employee than to compel a grocer to sell on the basis of the needs of the housewife. In other words, Mr. Justice Sutherland clearly considers labor a commodity and "in principle there can be no difference between the case of selling labor and the case of selling goods."

Minimum wage law and police power. The Court states that it was asked to consider the fact that several similar laws had been adopted but the judge dismissed that by saying that such laws "reflect no legitimate light upon the question of its validity and that is what we are called upon to decide. The elucidation of that question cannot be aided by counting heads." The opinion concludes with the comment that a minimum wage law would widen the police power dangerously and would jeopardize the guarantees of the Fifth Amendment and that the "good of society as a whole cannot be better served than by the preservation against arbitrary restraint of the liberties of its constituent members."

Labor and "the commercial contract". All in all, we find that when the lawyer, or any man learned in the law and its principles, focuses his attention upon a problem, he appears to be interested basically only in the contractual relationship. In order that his viewpoint may be fused with the truths that the economist has discovered, many experiments will have to

be made. In the case of the *West Coast Hotel v. Parrish*, et al.,¹³ the courts have granted this opportunity, and there undoubtedly will be a reshaping of many of the conflicting forces now in play and a new legal insight awaiting mankind.

The *West Coast Hotel v. Parrish* case presents the question of the constitutional validity of the minimum wage law for women of the state of Washington. The law also provided for the fixing of minimum wages for children. It provided:

Section I. The welfare of the state of Washington demands that women and minors be protected from conditions of labor which have a pernicious effect on their health and morals. The state of Washington, therefore, exercising herein its police and sovereign power declares that inadequate wages and unsanitary conditions of labor exert such pernicious effects.

Section II. It shall be unlawful to employ women or minors in any industry or occupation within the state of Washington under conditions of labor detrimental to their health and morals; and it shall be unlawful to employ women workers in any industry within the state of Washington at wages which are not adequate for their maintenance.¹⁴

Condition of employment. In this case the defendant conducted a hotel, while the plaintiff (Elsie Parrish) was employed as a maid. She brought this suit to recover the difference between the wages paid her and the minimum wages fixed pursuant to the state law. The minimum wage was \$14.50 per week of 48 hours. The act was challenged on the ground that it was repugnant to the due process clause of the Fourteenth Amendment of the United States Constitution. The trial court so held, but the State Supreme Court reversed this decision, sustaining the statute, and directed judgment for the plaintiff.¹⁵

13 *West Coast Hotel v. Parrish*, et al., 300 U. S. 379 (1937).

14 Laws of 1913 (Washington), Chap. 174. Remington's Rev. Stat. (1932).

15 *Parrish v. West Coast Hotel Company*, 185 Wash. 581 (1936).

Decision of Chief Justice Hughes. The Hotel Company relied upon the decision of the United States Court in *Adkins v. Children's Hospital*, discussed above; but Chief Justice Hughes in delivering the opinion of the Court held that it was impossible to reconcile the holding in that case with the declarations in the present case. Justice Hughes asks the question, "What can be closer to the public interest than the health of women and their protection from unscrupulous and over-reaching employers? And if the protection of women is a legitimate end of the exercise of state power how can it be said that the requirement of the payment of a minimum wage fairly fixed in order to meet the very necessities of existence is not an admissible means to that end?" The Justice hastens to consider problems that it now seems could have been considered by the justices in the *Adkins* case and many other state cases: "The legislature of the State was clearly entitled to consider the situation of women in employment, the fact that they are in the class receiving the least pay, that their bargaining power is relatively weak, and that they are the ready victims of those who would take advantage of their necessitous circumstances. The legislature was entitled to adopt measures to reduce the evils of the 'sweating system', the exploiting of workers at wages so low as to be insufficient to meet the bare cost of living, thus making their very helplessness the occasion of a most injurious competition. The legislature had the right to consider that its minimum wage requirement would be an important aid in carrying out its policy of protection." The court also took judicial notice of two unusual considerations: (1) the adoption of similar legislation by many states could be taken as evidence of a deep-seated conviction on the part of these states, both as to the presence of the evil and as to the means of checking it; (2) the additional consideration was the recent economic experience of the nation. "The exploitation of a class of workers who are in an unequal position with respect to bargaining power and are thus relatively defenceless against the denial of a living wage

is not only detrimental to their health and well-being but casts a direct burden for their support upon the community. What these workers lose in wages the taxpayers are called upon to pay. The bare cost of living must be met. We must take judicial notice of the unparalleled demands for relief which arose during the recent period of depression.”¹⁶

Thus *Adkins v. Children's Hospital* was reversed, and the twenty-three-year-old Washington law granting the state the right to fix through legislation a minimum wage law for women and children was held to be constitutional.

With this economic and political background in mind, we now turn to the more direct nature and cause of strikes.

Nature and cause of strikes. A strike is variously defined as a simultaneous cessation of work, or as the combined action by the workers either to compel their employer to accede to their demands or to oppose the demands of the employer himself. As a means of forcing the employer to yield, strikes are sometimes accompanied by riotous proceedings through which property and even life are endangered.¹⁷

The fundamental thing in any definition of a strike ought to be the emphasis of the fact that it is quite different from mere stoppage or quitting of work by the individual employee. It has been a habit with the courts of law to couple strikes with the individual's rights to leave his work. The strike is a

¹⁶ *United States Reports*, Vol. 300, p. 399.

¹⁷ The following definitions of a strike are typical in law and economy: "A combination among laborers or those employed by others to compel an increase in wages, change in hours of labor, change in manner of conducting business of the principal, or to enforce some particular policy in the character or number of men employed, or the like." (Delaware, etc., *R. R. Co. v. Bowns*, 56 N. Y. 581).

"A combined effort among workmen to compel the master to concession of a certain demand. The concerted cessation of work is but one of and the least effective of the means to the end; the intimidation of others from engaging in the service, the interference with and the disabling and destruction of property, and the resort to actual force and violence when requisite to the accomplishment of the end being the other and more effective means employed."

collective move to quit work but not to quit definitely. The purpose in back of the minds of the strikers is not to leave one employer to go to another but to compel the same employer to accede to their demand, with the intention of keeping the same job.

Individual rights v. collective rights. Legal decisions are prone to argue from individual right to collective right. They assume that if one has the right to do a certain thing, many should have the same right. There is, however, a fundamental distinction in the case of the strike. No question of leaving work is involved because the strikers do not intend to leave their work, in the usual meaning of the word. On the contrary, they intend to keep it after a successful resistance to the actions of the employer. The strike in this sense takes the form of premeditated action on the part of many to compel the employer to come to an agreement on terms advantageous to the strikers. Undoubtedly, certain legal decisions holding the strike in the above sense to be a conspiracy are nearer the truth than the analogy with the individual's right to quit his work.

Economically the strike is a collective withdrawal of labor. For the employee, the strike is a collective withdrawal of labor by a group who intend to return to their jobs after the employer consents to certain demands which have been made upon him. They intend to return to the same employment, but under better conditions than are offered by the employer at the time of the strike. The better conditions may be sought in various directions: higher wages, a change in hours of labor, or other improvements may be demanded. The intention is always to secure satisfactory terms and return to the same position rather than to leave the position and go elsewhere. The strike is a concerted withdrawal for the purpose of bringing pressure to bear toward holding the same job, with improved laboring conditions reflected in better working conditions, shorter hours, higher wages, etc.

Up to the middle of the nineteenth century, it was a doctrine of the courts of law that labor combinations are conspiracies. In the eighteenth century, even the statutory law of England forbade combination of workers, and the Judiciary Laws of 1799 and 1800 declared union agreements illegal. But the courts, while holding labor unions illegal, inferred that they were so under common law regardless of the statute. This view was held consistently throughout the eighteenth century, so that statutory legislation may be held as merely classifying and confirming the status illegal which labor combinations originally held under common law.

Unions and the courts. The courts where holding unions illegal paid attention only to judicial precedents, ignoring entirely the social and economic evaluations of the effect of labor unions. However, by the middle of the nineteenth century, the legality of union *per se* was definitely established. The expressions of the legality of organized labor are now so generally scattered throughout opinions that one cannot doubt that courts accept without question the view that associations of labor, so far as the effect of association apart from the act is concerned, are lawful.

Early decisions regarding unions. In the case of *Gary v. Building Trades Council*, quoting from Judge Thayer of the United States Circuit Court of Appeals, (*Hopkins v. Oxley Stove Co.*), it is stated on double authority that "the courts have invariably upheld the rights of individuals to form labor organizations for the protection of the interests of the laboring classes and have denied the power to enjoin the members of such associations from withdrawing peaceably from any service."¹⁸

In *Curran v. Galan* the following statement occurs: "In the general consideration of the subject it must be presumed that the organization or corporation of working men is not against

¹⁸ *Hopkins v. Oxley Stove Co.* 83 F. 912, 28 C. C. A. 99, Circuit Court of Appeals, Eighth Circuit (1897).

any public policy." So we can go on quoting from many other judicial decisions to the effect that workers have the absolute right to organize in pursuance of their legitimate interests.

In his opinion in the case of *Vegeahn v. Guntner*, (Mass.), Justice Holmes says:

So far, I suppose we are agreed. But there is a notion, which latterly has been insisted on a good deal, that a combination of persons to do what any one of them lawfully might do by himself will make the otherwise lawful conduct unlawful. It would be rash to say that some as yet unformulated truth may not be hidden under this proposition, but in the general form in which it has been presented and accepted by many courts, I think it plainly untrue, both on authority and principle, *Comm. v. Hount*, 4 Met. Mass. Ill.; *Randall v. Hazelton*, 12 Allen 412, 414. There was a combination of the most flagrant and dominant kind in *Bowen v. Matheson* (14 Allen 502), and in the *Steamship Co.* case, and combination was essential to the success achieved. But it is not necessary to cite cases. It is plain from the slightest consideration of practical affairs, or the most superficial reading of industrial history, that free competition means combinations, and that the organization of the world means an ever-increasing might and scope of combination. It seems to me futile to set our faces against this tendency. One of the eternal conflicts out of which life is made up is that between the effort of every man to get the most he can for his services, and that of society, disguised under the name of "capital," to get his services for the least possible return. Combination on the one side is potent and powerful. Combination on the other is the necessary and desirable counterpart, if the battle is to be carried on in a fair and equal way. If it be true that workingmen may combine with a view, among other things, to getting as much as they can for their labor, just as capital may combine with a view to getting the greatest possible return, it must be true that, when combined, they have the same liberty that combined capital has, to support their interests by argument, persuasion, and the bestowal or refusal of those advantages which they otherwise lawfully control.¹⁹

¹⁹ *Vegeahn v. Guntner et al.*, 44 N. E. 1077 (1896).

Legalizing labor unions in England and America. In England, a statutory law was passed in 1875 legalizing labor unions, but in America the workers are still uncertain of their legal status and quite at the mercy of the social theories of the particular court of trial, although the courts, on the whole, hold that there is a general right to organize because of the economic and social importance of labor unions.

Public opinion and labor. The attitude of the public has not been very friendly toward labor unions, but as the courts sometimes state, "No unprejudiced person at this date wishes to put an obstacle in the way of labor organizations conducting their operations within lawful limits. Everyone must acknowledge that organizations have accomplished much in the past for the benefit of the working man and recognize their prospects to secure for them in the future the enjoyment of other privileges."²⁰ In *Jordal v. Hayden*, the presiding Justice Chipman of California does not find it necessary to enter into a discussion of the right of labor to organize for mutual benefit and protection, adding, "All sane thinking persons consider this a right."

The federal government and labor unions. The statutes of the federal government have also been very tolerant toward labor unions. President Wilson went so far as to urge the most obdurate industrial magnates to meet the labor unions in conference. The Industrial Conference of 1919 was additional proof of the friendly attitude of the federal government toward collective bargaining on the part of labor. The present administration has been criticized as being too favorable toward labor.

The attitude of the employer toward the right to organize has been a mixture of both grievances and tolerance. The majority of employers now recognize this right. Even the most conservative accept it as a general proposition, but with the provision that labor join company unions instead of labor

²⁰ *Barr v. Essex Trades Council*, 53 N. J. Eq. 101, 30 Atl. 881 (1894).

unions. This in a way implies a limited right to organize unions in one form or another. There can be no doubt that the Courts, the public, the federal government, and even the employers at times, find unionization of labor a matter of economic and social necessity.

Collective bargaining from standpoint of labor. One of the purposes of organized labor is to bargain collectively. Business combinations have necessitated that course of action. It is useless to have the right to organize without a right to bargain collectively. Therefore, with the consideration of labor unions properly comes a consideration of collective bargaining. It is true that many employers would gladly consider the right to organize without the right to bargain collectively. Theirs is by no means a complete concession. As the attitude of the employers has gradually changed toward the right to organize, however, so it is surely changing toward the right to bargain collectively.

The necessity of labor unions for collective bargaining. Labor unions consider collective bargaining a necessity. From their point of view, the right to organize is valueless without it and the friendly attitude of the courts and the legislatures toward unionization is of no use unless they also concede the right of labor to bargain collectively. Labor economics has shown us the futility of the individual worker's attempt to bargain with his employer. It is generally considered that there is no equality in such bargaining power. On the one hand, there is the tremendous power of organized and amassed capital, as represented by the employer, and on the other hand the economically powerless individual worker. The usual attitude of the courts of law in assuming the equality of the individual worker in his bargaining with the individual employer does not take into consideration the tremendous financial power that the employer represents. The bargaining capacity of the individual laborer is so meager and so inadequate that every sane man will admit that there is no real equality involved in the whole process.

If we want justice in bargaining, there must be a collective agency for the worker to oppose the financial power of the employer.

There are many reasons why labor should bargain collectively. The classical theories that wages go up in proportion to demand cannot persuade the modern workingman that he will get a fair return for his labor by the mere operation of economic laws. The history of the relations between labor and capital shows us that economic advantages usually accrue to labor when it is effectively organized and in a position to bargain collectively. Socially, collective bargaining should be considered beneficial, for the standard of living of the working classes has usually not been raised without it, and their welfare is dependent upon it. On the whole, there is widespread agreement that hand-in-hand with the right of labor to organize comes the right to bargain collectively.

Collective bargaining from standpoint of capital. There is a difference of opinion between labor and capital concerning the agencies of collective bargaining. There are many influential employers who insist that the proper agencies for collective bargaining are the shop committees. They, therefore, have taken up the formation of company unions under the guidance of the management or the employer himself and have extended to these company unions a voice in matters concerning labor. Organized labor, however, insists that the labor unions should be the only agencies for collective bargaining. They do not believe in the efficacy of the company unions and shop committees. It is useless to call the collective bargaining of the shop committees "power", when it is known that they are unable to enforce any of their schemes.

Assuming that the right to organize and to bargain collectively is generally recognized, one important question remains to be settled. What will happen if the employer makes every effort to frustrate the procedure of collective bargaining? What if he does not wish to consider the demands of labor unions?

The right to strike. The right to strike is a natural consequence of the right to organize and the right to bargain collectively. The courts assert that it is a general right of workers to strike. It is true that the law at this point is neither clear nor definite. Even authorities differ greatly. In former times, the illegality of strikes went with illegality of labor unions, but existing legal decisions hold that strikes are not necessarily illegal.²¹ From the point of view of the courts, there is no question of the general right of the workers to strike.

"Purpose" and "means" of strike a legal technique. However, the same courts try to pass upon the legality or illegality of the strike on the basis of the purpose and the means employed. Not all strikes are lawful. Certain decisions are relied upon to determine the lawfulness of a strike. First of all, there is the object. If the purpose of the strike is to further the legitimate interest of the workers, then it is legal. If, however, the intent is to injure the employer, then it is held illegal. In *Reynolds v. Davis*, it is stated, "The legality of a strike depends upon the purpose for which the combination is formed—the purpose for which the employees strike. To justify interference with the rights of others, the strikers must in good faith strike for a purpose which the court decides to be a legal justification for such interference. A strike is not a strike for a legal purpose because certain strikers struck in good faith for a purpose which they thought was a sufficient justification for a strike. As we have already seen, to make a strike a legal strike, the purpose of the strike must be one which the courts of law decide is a legal purpose of a strike, and the strikers must have acted in good faith when striking for such a purpose."²²

It seems that the object and purpose of the strike should be inquired into by the courts and its lawfulness decided accordingly. The fallacy of such a position is expounded in

²¹ *Arthur v. Oakes*, 63 Fed. 310 (1894).

²² *De Minico v. Craig*, 207 Mass. 593 (1911).

Cooley on "Torts" when he says that "malicious motives made a bad act worse. But they cannot make that treason which in its own essence is lawful." In the majority of the courts, the legality of a specific strike is determined by the justifiability of its objects. Since each judge may well entertain a different view on the subject, the decisions are confused. Strikes simply to increase wages, to shorten hours, or to better working conditions are legal.

It is in the interest of the labor union itself, the employer, and the public to use peaceful means in carrying on the strike. It is true that violence at times seems unavoidable when it involves picketing, but the use of violence is illegal and courts do not hesitate to say so.

Causes of strikes. The causes of strikes are numerous and varied. It is not necessary to discuss them at any length at this point, because as we go on we will amplify the causes of strikes involved in the three typical industries under consideration. The U. S. Bureau of Labor Statistics has in various reports listed the following causes:

1. For increase of wages
2. Against reduction of wages
3. For reduction of hours
4. Against increase of hours
5. Recognition of union and union rules
6. Employment of certain persons (not involving union rules)
7. Employees working out of regular occupation.
8. Overtime work and pay
9. Saturday and part holiday
10. Docking, fines and charges
11. Working conditions and rules (not involving union rules)
12. In sympathy with strikes and employees locked out
13. Other causes, not specified above.

To sum up, the following major causes are recognized by all economists and given as the major problems:

1. The struggle for union recognition. This is probably the most important cause of general strikes, especially strikes involving industries in which labor is not well organized. It is one thing to consider the right to organize; it is another to organize labor unions. Consequently, it has been a constant struggle between labor and capital for unionization or recognition of unions. Union labor's first demand has been recognition, while the employers have ostensibly tried to sidetrack the issue in refusing to recognize the union.

2. Wages of labor. While the struggle for unionization is a means, wages as a cause of a strike is an end in itself. The most important thing to the individual laborer is the amount of money that he gets. His whole purpose in unionization and in striking is to get high wages, while the interest of the employer lies in low wages and high profits.

3. Hours of labor. Next to wages of labor, this cause is one of the most important. There have been constant attempts on the part of labor to demand shorter hours. The working day has been reduced from twelve to ten, and then from ten to eight hours.

4. Conditions of employment. This has been another general cause of strikes. Probably to the individual employee it is not so important as the other causes, but many strikes have taken place because of this. Employment conditions are so important socially that governments have found it a duty to legislate freely concerning them.

Strikes as a weapon of the employee. If in the past strikes were the only weapon which the wage-earner could command to obtain recognition of his rights, to end sweatshops, to reduce killing hours of toil, to obtain fair recompense for his labor—even then the permanent gains to society were of far greater consequence than the harmful factors which accompanied such labor disturbances. But the conclusions of this chapter are predicated upon the assumption that modern society can and must find a legal way to adjust labor disputes and assure fair play for worker and employer. This need to

eliminate destructive strikes supersedes the relative interest of either capital or labor; it is a vital concern of the community which is no party to the strike but suffers because of it. In some of the colonies of Great Britain the settlement of labor disputes is effected by the government when strikes are not adjusted by employers and workers themselves. The official decision is binding upon both parties, and any refusal to abide by it peacefully is subject to economic pressure and may be the cause of legal action.

CHAPTER II

GAINS FOR LABOR IN AMERICAN INDUSTRIES SINCE 1900

Collective bargaining in anthracite. The right to bargain collectively was recognized in the anthracite coal industry in 1903. The award of the Anthracite Coal Commission of that year took it for granted that disputes were to be settled in joint conference—both labor and capital participating. The United Mine Workers considered this virtual recognition. The Commission stated that “experience shows that the more full the recognition given to a trade union, the more business-like and responsible it becomes,” and it favored recognition of the union as a proper basis for collective bargaining and for the settlement of differences between employers and employees. But the operators held to a technicality in the successive agreements that were signed. In 1909, the operators expressed their attitude more clearly as follows:

We do not recognize you as United Mine Workers at all; not today or at any time. We recognize you as representing men in our employ in the anthracite regions; we made that a condition, and we assume you represent our miners only. The accident of your being President White of the United Mine Workers has no influence on us at all; we do not meet you as such, not one of you. We meet you as representatives of our anthracite mine workers in the anthracite mine regions.—(From minutes of Conference of Operators and Mine Workers.)

In 1912, this technicality became more refined. It was signed by the two groups under the following designations: “On behalf of the anthracite operators” and “On behalf of the anthracite mine workers’ organization.” Thus they recognized an unnamed organization but refused to allow Mr. White to place after his name his official designation, “President of the United Mine Workers of America.” Finally, the Anthracite

Commission of 1920 approved the request of the miners for full recognition of the United Mine Workers, and directed that the contract entered into should be between the operators and the presidents of the unions in the three anthracite districts. The award of the Commission was written into an agreement on September 2, 1920.

Cause of strikes in the steel industry. In the steel industry, the direct and underlying cause of strikes has been the desire for the right of collective bargaining, the right to organize, and recognition of the union—objects which were not achieved until the Amalgamated Association accepted the National Industrial Recovery Act and started to work within its framework.¹

In the coal industry, wages had remained at the same nominal level since 1879. During the twenty-five years prior to the strike of 1900, the average daily wage of the mine workers was only \$1.50, on the basis of a three hundred-day year. However, the average number of days worked per year was 190, which greatly reduced his annual income, making his earnings irregular and uncertain. Since 1900, there has been a periodic average increase of ten per cent, due wholly to successful strikes. In the coal industry, the bargain theory of wages has been in operation since 1900, and organized labor with the strike as its economic weapon has been the effective agency for increasing wages. We can conclude that the steady wage increases in the industry have been the direct result of strikes.

The same conclusion does not hold true in the steel industry. The average annual wage received by the 168,000 employees of the U. S. Steel Corporation in 1902 was \$717. About

¹ In 1933 an incident occurred at Ecorse, Michigan, which illustrated the feeling between the workers, and the companies' efforts to keep out union activities. The workers destroyed their company union books as soon as they received them. When the National Steel Corporation was unable to put across its own company union, it was then ready to see the workers sign up with the Amalgamated Association. From Oct., 1935 through Dec., 1937, 74.8 per cent of the total elections under the N.L.R.B. were won by trade unions.

122,000 of the 168,000 men received on the average \$560 per year. The estimated annual earning of common laborers in 1901 was \$486; in 1918, \$1296; in 1919, \$1637; in 1920, \$1724; in 1922, \$1037. A table of wages from 1901 to 1922 shows the slow but direct result of strikes. The three war years prove an exception: 1916 showed a 36.7 per cent gain over the preceding year; thereafter the gross real earnings per capita remained stationary in spite of rising wage rates. The corporation has often increased wages in anticipation of strikes. But on the whole, the increase in wages in the steel industry has been dependent upon the good will and paternalism of the corporation, which has been autocratic in its method of fixing wages. The chief point here is, of course, not the inadequacy of the wage but the manner in which it is determined. That has always been by fiat of the executives, subject only to the exigencies of business—in complete contrast with the method of determining wages in the anthracite coal industry.

But by July of 1937 developments in collective bargaining in the steel industry had gone far toward constructive relations between employers and employees. The program came about when an aggressive element among employee representatives attempted to establish united action among the workers of the various plants and companies. These employees received encouragement in their efforts from the Steel Workers Organizing Committee. An agreement between the United States Steel Corporation and the S.W.O.C. was reached in March, when the companies were faced with a united demand for higher wages and shorter hours, and the campaign for organizing S.W.O.C. was gaining ground. By August the S.W.O.C. claimed that it had nearly 500,000 members and over 350 signed agreements. Fifty of the companies who had signed these agreements employed in July, 1937, about 260,000 hourly, tonnage, and piece workers, or about half of the 530,000 wage workers employed by 218 iron and steel companies.²

² *Information Service*, "Collective Bargaining in Steel," Vol. 16, No. 39, 1937.

The influence of the U. S. Supreme Court decision. The fact that the Supreme Court in April sustained the constitutionality of the National Labor Relations Act doubtless helped to decrease the resistance of the companies to collective bargaining. The drive of the S.W.O.C. was retarded when such large companies as the Republic Steel Corporation, the Bethlehem Steel Corporation, the Youngstown Sheet and Tube Company, the Inland Steel Company, and the National Steel Corporation not only refused to sign agreements but successfully combated strikes carried on to procure signed agreements.

Independent labor organizations. After the Supreme Court upheld the National Labor Relations Act most companies discontinued support, financial or otherwise, of "employee representation plans." As a result "independent" labor organizations sprang up from the ground laid by representation plans. What support these organizations received came, for the most part, from former employee representatives who were opposed to the S.W.O.C. At the present time they are strongest in companies which have refused to sign S.W.O.C. agreements. In both Pennsylvania and Ohio they are allied with various citizen and vigilante groups. Their membership contains both plant employees and salaried white-collared workers. Company police have been encouraged to join, and in some instances foremen and supervisors are admitted as "non-voting" members.

The agreement between S. W. O. C. and the operators. The agreement of the first company to be signed by the S.W.O.C. (Carnegie-Illinois Steel Corporation, a subsidiary of the U. S. Steel Corporation) has been used as a standard agreement for most other companies. This agreement does not provide for a closed shop or the check-off of union dues. It does provide machinery for settling disputes, which, when and if necessary, will pass through various stages until they reach a conference between representatives of the national union and the highest executive of a corporation or their representatives. If

they still disagree, the dispute must be referred to an impartial umpire appointed by mutual agreement of the parties, and this decision is final. Here we have growing up with an employees' organization the fundamental principle of settling industrial disputes, through arbitration. The possibility of resorting to the strike is at least left to a last resort.

The effect of New Deal legislation. Beyond doubt legislation of the "New Deal" has brought about a change in the attitude of steel management toward collective bargaining, but once legislation has been enacted, the companies have praised the "collective cooperation." The management has grown to favor legislation restricting union activities.

The problem of hours of labor has been less disturbing in the coal industry than in the steel industry. The Anthracite Coal Strike Commission of 1903 granted the demand for an eight-hour day, awarding eight-hour shifts for engineers, firemen, and pumpmen, with no reduction in wages, and Sundays off at the company's expense. Other employees were to be paid on the basis of nine-hour days with the same wages received for ten-hour days, and with overtime in excess of nine hours.

In contrast, there has been a long and laborious agitation in favor of shorter hours in the steel industry without any results. For two generations, the steel industry has been notorious for its long hours, and prior to August, 1923, excessive hours were probably the chief complaint of the workers in the industry. They were certainly the chief indictments its critics brought against it. The corporation itself appointed a committee to investigate the matter which in its report said: "Whether viewed from a physical, social, or moral point of view, we believe the seven-day week is detrimental to those engaged in it . . . we are of the opinion that a twelve-hour day means a decreasing of the efficiency and lessening of the vigor and vitality of such men."

The question was raised several times within the corporation itself, but the twelve-hour day, seven-day week with little

change remained in force until 1923, when the corporation had to meet public and official demand for its abolition.

Gain in union membership. In 1933, the persistent decline in union membership was checked. During that year there was an increase of over 600,000 and by the end of 1934 union membership was restored almost to the level of 1923. The numbers gained in this single year almost equalled the total loss in the decade 1923-33 and were more than the total loss during the recent depression. During 1935, the gain in union membership continued to advance, though at a much slower rate.

These recent changes are contrary to the background of the history of organized labor, and the causes are interesting. There was, to be sure, a reversal of the downward trend of business activities, and a corresponding increase in employment by the middle of 1933. The upward movement continued with brief interruptions until 1937. But the gains in union membership cannot be ascribed to the forces of industrial recovery. In many industries employment and payrolls remained far below the levels of the pre-depression period. Large numbers of unemployed existed throughout the American labor market, and the numbers on public relief rolls remained at unprecedented heights. Increase in production, and a high labor market, which usually account for increases in union membership, have certainly not been equally influential factors in the present situation. The considerable increase since 1933 suggests the action of forces other than those of business revival alone, and much more powerful than the lift in employment and wages.

Government control, and labor legislation as a factor. Probably the chief factor in union expansion in this latest phase of the history of organized labor has been the extensive experiment in governmental control over the competitive practices of business and in labor legislation. The government attempted a similar experiment during the World War. Now, for the second time in a generation, the federal government

again sought, though for a different end, to regulate the conduct of labor relations. The government's labor policies of 1917-18 were a direct result of the requirements of a national war economy; the recent program has as its objective the reform of prevailing economic and social relationships. While the encouragement given to collective bargaining was an integral part of the government's program to increase the volume of the consumers' purchasing power, and the achievement of greater equality in bargaining power between employers and employees was regarded as crucial in the application of the administration's theory for a program of recovery, nevertheless, strong as this motive was, it was joined with the equally strong intention to adjust the traditional grievances of organized labor. The intention was to redress all wrongs in industrial relations and to establish a species of partnership in the affairs of the shop between labor and management.

The chief influence in furthering the administration's labor policy was the National Industrial Recovery Act and the practices growing out of its administration, mentioned in the previous chapter.

The Act also declared it to be the policy of Congress: "To provide for the general welfare by promoting the organization of industry for the purpose of cooperative action among trade groups, to induce and maintain united action of labor and management under adequate governmental sanctions and supervision . . ."

Whatever difficulties these principles later encountered, their intent to encourage organization and collective action is obvious. Their pronouncement in an Act of Congress gave the advocates of organized labor the arguments and encouragement they had long desired and of which they quickly made use. The very content of this law soon became the effective stimulus to organization which the labor movement had been unable to devise for itself in all the time since 1920. If the provisions of this Act produced strikes and lockouts in indus-

try, the conflicts were largely concerned with the efforts of unions to extend the scope of their organization.

The Labor Advisory Board. The Labor Advisory Board was composed, with but two exceptions, of officers of the American Federation of Labor. The hundreds of labor advisers on individual codes were in the great majority of cases selected by the American Federation of Labor. The important labor policies and changes brought about by the national administration were reflected in the differences among unions in the membership in 1933, 1934, and 1935.

The importance of the Schechter decision. However, the Recovery Administration and all the boards were eliminated by the decision of the United States Supreme Court on May 27, 1934, in the case of *Schechter v. U. S.* Section 7 (a) and all the administrative agencies lasted just short of two years. This decision resulted in a very unfavorable reaction among organized labor. They immediately attempted to devise a substitute for N. R. A. that would be constitutional. They put pressure behind the Guffey Coal Bill, creating the so-called "little N. R. A." for the bituminous coal industry. All of this tends to prove the high esteem in which the policy and procedure of the Recovery Administration were held by the labor movement of this country.

The influence of the National Labor Relations Act and the Guffey Act. This type of labor legislation did not end with the dissolution of the labor boards and code authorities. On July 5, 1935, the president signed the National Labor Relations Act³ and on August 30, 1935, the Guffey Act.⁴ These measures differ in many details, yet they have the common purpose of encouraging the use of collective bargaining in the labor relations of industry. The National Labor Relations Act furnished the basis for the powers of regulation over discharge

³ 49 *U. S. Stat. at Large* 457, 29 *U. S. C. A.*, Sec. 151-166.

⁴ Bituminous Coal Conservation Act, August, 1935, 44 *U. S. Stat. at Large* 578.

of employees, choice of employee representatives, and the procedure of collective bargaining. The Act lists as unfair labor practices (Section 8) on the part of the employer: (a) interfering with the right of employees to organize, (b) domination or interference "with the formation or administration of any labor organization" or the contribution of "financial or other support of it," and (c) discrimination "in regard to hire or tenure of employment on any terms or conditions of employment to encourage or discourage membership in any labor organization."

The extent of the Coal Conservation Act. The provisions of the Coal Conservation Act went beyond the regulation of collective bargaining to control over production and prices. In so competitive an industry as coal mining, in which the union has long suffered from the shift of business from high to low cost areas, regulation of prices was expected to contribute to maintaining prevailing wage rates and labor costs and thereby fortify the position of organized labor. The Guffey Act was held unconstitutional by the United States Supreme Court on May 18, 1936. Another measure, limited to control over prices and output, was introduced in the last session of the 74th Congress. But in spite of the support of the United Mine Workers, the bill failed to be brought to a vote before Congress adjourned on June 20, 1936. A bill to fix minimum mine price, prescribe marketing rules, and prohibit unfair methods of competition was jointly introduced in the two houses of Congress July 15, 1937, known as the Guffey-Boland Act.

The Social Security Act. The Federal Social Security Act ⁵ was approved on August 14, 1935. It may be expected to confer opportunities upon the American labor movement and therefore to produce great results in organization. This measure, providing, among other things, the beginning of a nationwide system of compulsory unemployment insurance, will require for its administration the setting up of innumerable local

⁵ Ch. 531, 49 Stat. 620 (1935).

joint committees and courts of appeal to head and adjust complaints.

The significance of labor legislation and its administration.

The significance of this structure of labor legislation and its administration to the growth and decline of labor organization is important. Up to this time, the relations of federal and local governments to organized labor have not been particularly sympathetic and the firm assertion of the rights of labor contained in the Recovery Acts is bound to be an effective stimulus for other legislation.

The organizing campaigns launched by unions. The organizing campaigns launched during this period were carried on simultaneously by the affiliated and independent national unions themselves and by the American Federation of Labor. Even before the passage of the Recovery Act, the United Mine Workers had begun their organization drives to repair the damage done by the depression. In the first stages of its organization activities during this period, the American Federation of Labor did what it had done on many occasions in the past. It set up in many industries a type of local union technically known as "local trade and federal labor unions." These unions are directly affiliated with the Federation and not related to it indirectly. Historically, local unions of this type have served as simple and reasonably effective devices for organizing the unorganized, and later their membership is distributed among the appropriate existing national craft unions. The organizing strategy adopted by the Federation in 1933 continued this practice. There was, however, a constantly growing dissatisfaction. Probably the strongest source of opposition to the prevailing policy was among the young organizers who were unfamiliar with the principles and practices of the American Federation of Labor, who believed the only effective labor organization was the form of industrial unionism. To them, the craft union was synonymous with failure. So the issue of industrial unionism was raised again at the convention held in October, 1935.

The resolutions committee split on the question, with officers of the United Mine Workers presenting a minority report strongly urging the granting of unrestricted jurisdiction to the union of employees working in mass production industries. After a long and heated debate, the minority report failed of adoption by a vote of 10,933 to 18,024.⁶

The birth of the C. I. O. However, this vote did not conclude the conflict. Some weeks after the convention a group of eight national unions⁷ affiliated with the Federation, led by the United Mine Workers, announced that they had organized themselves into a Committee for Industrial Organization, to promote the unionization of the unorganized, above all in the steel, automobile, and rubber industries, by means of industrial unions. As a result of this declaration, it would seem that the American Federation of Labor faces a long and bitter conflict. At the present time, the C. I. O. followers furnish evidence of dissatisfaction with the leadership and policies of the A. F. of L. The C. I. O., through Mr. Lewis, contends that the A. F. of L. has neglected seventy per cent of American workers, that its organization is interested only in the "aristocracy of labor," the skilled. Mr. Lewis has directed his appeal to this seventy per cent. He and the C. I. O. contend that every worker should be organized into one labor organization, that the various craft unions are too small a unit, and that as long as they exist as they do under the A. F. of L. the American worker will suffer. It was this appeal that the unorganized worker did not resist, for a conservative estimate places the membership in C. I. O. at three and one half million. The C. I. O. has placed the number at near ten million.

But besides numbers in membership, the Committee for Industrial Organization has been effective. The organization suc-

⁶ *Proceedings* (1935), pp. 521-74.

⁷ United Mine Workers; Amalgamated Clothing Workers; Cap and Millinery Workers; United Textile Workers; International Typographical Union; Oil Field and Gas Wells Workers; Mine, Mill and Smelter Workers; and International Ladies Garment Workers.

ceeded in organizing U. S. Steel, General Motors, the Chrysler Corporation, and other large industries. Mr. Lewis not only points to these achievements with pride but also to the fact that Mr. Green and the American Federation of Labor had never succeeded in organizing these industries.

The weakness of the United Mine Workers in the soft coal industry after 1927 resulted in extensive organizing activities by a communistic union of coal miners and also in the establishment of an independent union, the Progressive Miners of America. This union, claiming 38,000 members, still exists. In the anthracite coal industry, continued depression and the shutting down of many mines after 1929 led to the organization of an independent union called the United Anthracite Workers, which was dissolved, in October, 1935. The members of this union were almost exclusively unemployed anthracite miners.

The question of the success of a strike. Because of the many factors involved in the causes and aims of a strike, it is quite difficult to interpret accurately and to measure the degree of its success or failure. For instance, a group of workers may strike for union recognition but may return to work when the employer offers them a wage increase, considering their strike a success though they may have failed to attain their announced objective. On the other hand, a strike ensuing for a closed shop in a plant which has been openly hostile to trade unions might be considered successful if the terms of settlement provided for union recognition even if it resulted in no other substantial gains. But immediate results are not always an accurate indication of the far-reaching consequences. The terms of settlement may give no apparent evidence that any of the strikers' demands have been conceded. However, the employer may have been made to realize that certain conditions which were unsatisfactory to the workers must be changed if another strike is to be avoided; or the strikers may return to work with every indication that they have won their strike, whereas it may have led the employer to make arrangements to close his business or move to another community. An additional difficulty

in determining the success of a strike is the fact that each of the opposing parties may at the beginning demand much more than it expects to get. Therefore, any statistical measurement of the results of a strike must necessarily be based on the apparent results or terms of agreement at the close of the dispute and these results, in turn, must be measured in relation to the conditions existing and the demands made when the strike was called. Over a period of the last thirty years, strikes have been shorter and more advantageous to the worker. This may be due in part to the fact that lately there have been more strikes for union recognition, which in turn gave labor greater bargaining power.

Number of strikes and gains for the worker. During 1935, there were 2,003 strikes. According to Department of Labor figures, 44.3 per cent resulted in substantial gains for the workers, 18.7 per cent resulted in partial gains or compromises, and 33.4 per cent resulted in little or no gains to the workers.⁸ At least fifteen per cent of the first group were defense strikes that were called in protest against wage reductions, violations of agreements, etc. Actually the results of these strikes, although favorable to the workers, did not result in net gains over previous conditions.

Settling strikes through direct negotiation. Recently, the most common method of settling strikes has been through direct negotiations between employers and union representatives. In 1935, the use of this method brought about settlements in 38.5 per cent of the total number of strikes for that year. Government conciliators and labor boards assisted in working out settlements in 31.3 per cent of the total number. In this group were many of the larger strikes, as evidenced by the fact that 59.4 per cent of the workers obtained settlements through the assistance of government conciliators.

The U. S. Department of Labor reports that more than one-fifth of the strikes which ended in 1935 were terminated with-

⁸ U. S. Department of Labor, Bureau of Labor Statistics, *Serial No. R389*, p. 12.

out formal settlement, and practically all of these strikes were lost by the workers.⁹ In some cases, the workers returned to their jobs under old conditions; in others, the strikes were terminated and lost when employers liquidated their businesses or moved to other localities, the strikers being left to find new employment; and in still other cases, the strikes were lost when employers hired new workers to take the places of the strikers.

Labor organizations were involved in over three-fourths of the strikes which ended in 1935. Unions independent of the A. F. of L. were involved in thirteen per cent of the strikes, and eight per cent were carried on without union leadership—most of the last group being on relief work and W. P. A. projects.

Unions' assistance in time of strike. In most cases, the union involved called a strike and furnished active leadership throughout the dispute. In some cases, however, strikes unauthorized by the proper union officials were called by the workers and later the union gave formal sanction and assisted in arranging the settlement. In still other cases, the workers were unorganized at the beginning of the strike, but the union stepped in and assisted in obtaining the settlement as a means of organizing the workers.

The general trends of strikes and labor disputes for the recent years of 1935, 1936, and 1937 show a consistent lack both of organization of the laborers and policy as to procedure after organization. However, one can deduce from comments made by labor leaders and union organizers that they are aware of a need for organizational uniformity, both as to technique and procedure.

Strikes in 1937. Whereas there were some 1200 strikes during the year 1936, there were none participated in directly by either the U. S. Steel or Anthracite Coal industries. Nineteen thirty-six and thirty-seven will probably go down as two of the outstanding years as to numbers of labor disputes.

⁹ *Ibid.*, p. 13.

August alone in 1936, had 220 new strikes, involving 63,000 workers. As a result of the 220 strikes, and 120 others which began prior to but continued during August, there were 925,000 man-days of idleness during the month. There was a 25 per cent increase in strikes during August over the preceding month of July. During 1937 there were 28,424,857 idle man-days. The preliminary figures for 1938 show a decrease of fifty-six per cent in number of strikes, seventy-nine per cent in number of workers involved, and a similar reduction in man-days of idleness.

The Guffey Act. The so-called Guffey Act¹⁰ was an effort on the part of the government to stabilize the bituminous coal industry and to bring about better labor relations. This Act provided that there be established in the Department of the Interior a Bituminous Coal Commission of five members appointed by the President and authorized to formulate a bituminous coal code as a working agreement for the producers accepting its terms.

The background of this Act was a desire on the part of the government to gain cooperation of operators and miners (United Mine Workers of America) in support of new legislation with teeth for the regulation of the bituminous coal mining industry. Both the operators and the miners supported the bill, the former because of the adverse effect of the non-compliance with voluntary price structure of the N. R. A., and the latter through fear that wage structure would fall with a break in prices.

The report of the planning committee for mineral policy¹¹ contended that the law was needed for the prevention of competitive waste; stabilization of employment; limitation of cut-throat competition; control of production, capacity, stock, and price; recognition of competition between mineral industries;

¹⁰ Bituminous Coal Conservation Act, August, 1935. 49 *U. S. Stat. at Large* 991.

¹¹ National Resources Board, *Report on National Planning and Public Works*, Part IV, pp. 392-414.

elimination of waste and improvement of mining technology; adjustment of supply and demand and protection of the consumer of coal by imposing a maximum price.

The Act when passed provided for a National Bituminous Coal Commission of five members appointed by the President, mentioned above, to serve for four years. Their duties among many others were to formulate the Bituminous Coal Code and to establish minimum and maximum prices. The Act named the unfair methods of competition. Labor was given the right to organize and bargain collectively through representatives of their own choosing and they were also not to be required to join company unions, live in company houses or trade in company stores.

However, the machinery created by the Act had hardly been set up when the United States Supreme Court declared certain provisions of it to be unconstitutional. The court held that the labor provisions were an unconstitutional delegation of legislative authority under the Fifth Amendment and therefore outside the scope of federal jurisdiction, consequently invalidating the price-fixing provisions because of their inseparability from the labor provisions.¹²

The invalidation of this Act was followed by the passage of the Bituminous Coal Act of 1937.¹³ The continued state of near-collapse of the bituminous coal industry made both the operators and the miners desirous of continuing regulation under a plan such as the Bituminous Conservation Act of 1935 with modification in line with the United States Supreme Court construction of previous legislation affecting the bituminous coal industry. The provisions of the 1937 Act were similar to the 1935 Act insofar as administrative organization was concerned. It created a National Bituminous Coal Commission of seven members, appointed by the President for a period of four years. The Commission was given more authority than the Commission under the Act of 1935. The new Commission has

¹² *Carter v. Carter Coal Co. et al.*, 298 U. S. 238 (1936).

¹³ Public Doc. No. 48, 75th Cong. 1st Session, 1937.

power to prescribe for code members minimum and maximum prices, marketing rules and regulations; it has the duty to establish, operate, and maintain statistical bureaus as agencies of the Commission; it has power to act in lieu of district boards upon failure of the latter to take action authorized or required by the Act. The Commission has a duty to establish a Bituminous Coal Code and to establish minimum and maximum prices. The unfair methods of competition were established by the Act.

The labor provisions of the Act conform to the U. S. Supreme Court's opinion invalidating the Act of 1935. There is no provision for coal labor boards or the imposition of wages or hours of labor agreements. The employees have a right to organize and bargain collectively through representatives of their own choosing, with respect to hours of labor, wages and working conditions. The employee is to be free from interference, restraint or coercion by the employer, and is not to be required as a condition of employment to join a company union. The government brings some pressure to bear on the operators, in that no coal is to be purchased by the United States government departments or agencies thereof from mines where producers fail to observe the above rights during the production of coal.

It is perhaps too soon after the passage of the Act to speak for its success. It can, however, be said that the federal government has taken a step in the development of governmental regulation of a complicated interstate industry. The Act establishes geographical groupings of coal producers, arranging the coal fields into twenty-three groups called districts, and arranging these twenty-three districts into ten groups called minimum-price areas.

With minimum and maximum prices established for coal, with unfair competition limited in the industry, and statistical bureaus maintained for the purpose of determining production and consumption, the industry should become more stable and thereby give more work under more favorable working conditions to greater numbers of workers.

In discussing the gains for labor made through legislation, we must consider two laws, national in character and far-reaching in scope and application. Both were designed to aid the states in enforcing statutes regulating or prohibiting the sale in the open market of prison-made goods. The first of these laws was the Hawes-Cooper Act.¹⁴ This Act was designed to divest goods, wares, and merchandise manufactured, produced, or mined by convicts or prisoners, of their interstate character in certain cases.

The Hawes-Cooper Act and its effect upon labor. To understand clearly the purpose of the Hawes-Cooper Act, it is necessary to note that for more than twenty-five years the American Federation of Labor, manufacturers, and other interested groups sought the aid of Congress in the solution of the prison-labor problem. The reason for petitioning Congress became clear when the facts of the constant increase in prison-made goods were presented.

Early in the legislative program of the respective states, movements were begun to curtail the sale of prison products in the open market. These movements took various forms: labeling acts, requiring prison products to be plainly marked; high license fees for vendors; taxation and measures prohibiting the sale of such products on the open market. In New York and other states an attempt was made to apply the regulatory state statute to prison products shipped in from sister states.

The New York courts held that the New York statute by itself was in conflict with the commerce clause of the Federal Constitution and therefore invalid. Subsequently other state courts held likewise and it became manifest that while a state might protect its own private industry and workers against the competition of prison products made in its own prisons, it could not without congressional action protect its own industries and labor from the products and labor of outside prisons, transported and sold in interstate commerce. Labor

¹⁴ Public Doc. No. 669, 70th Cong., January, 1929.

and industry then urged upon Congress that no state should have the legal right to attempt to override the express will of a sister state.

The basic principle of the Hawes-Cooper Act was the removal of the interstate commerce impediment, operating to restrict state laws.¹⁵

The Ashurst-Sumner Act. The Ashurst-Sumner Act¹⁶ was designed to prohibit the interstate transportation of prison-made goods in certain cases. In addition to subjecting prison goods to the laws of the states under the Hawes-Cooper Act, Congress under the Ashurst-Sumner Act has taken a further step. If anyone "interested" in the transaction is convicted of knowingly transporting, or causing to be transported, such articles into any state where they are intended to be received, possessed, sold, or in any manner used in violation of the laws of the state of destination, such persons may be fined not less than \$1000 and the goods involved in the transaction may be seized and disposed of by the U. S. Government.¹⁷

The interest of labor in both the Hawes-Cooper and the Ashurst-Sumner Acts became apparent when the information was disclosed of a continued and substantial increase in the production and interstate sales of prison-made goods, notwithstanding the previous passage by twenty-one states of laws prohibiting such sales. The United States Department of Labor issued a report giving the result of a survey of the extent and character of prison labor in the United States in 1932.¹⁸ This document, issued in 1933, covers the period midway between the approval of the Hawes-Cooper Act and its effective date. It shows that goods in the value of approximately \$28,000,000 were manufactured in state prisons and sold in the open

15 The Hawes-Cooper Act was sustained as to constitutionality in *Whitfield v. Ohio*, 297 U. S. 431, 80 L. Ed. 527 (1936).

16 Public Doc. No. 215, 74th Cong., S. 2904, July 24, 1935.

17 The Ashurst-Sumner Act was sustained as to constitutionality in *Kentucky Whip and Collar Co. v. Illinois Central R. R. Co.*, 299 U. S. 334 (1937).

18 Bureau of Labor Statistics, *Bulletin No. 595* (1933).

markets of the country, and that 65.7 per cent of such goods were sold outside the state where produced, thereby imposing upon certain unwilling states most of the financial burden of the administration of the penal institutions of those states where prison goods were sold in interstate commerce.

Interstate sale of prison-made goods. This report also disclosed that the Kentucky prisons in 1932 produced goods in the value of \$3,006,763, of which there were sold outside the state goods totaling in value \$2,738,902. It was further shown that in all the prisons in the country 82,000 prisoners were engaged in production employment in 1932, as against 51,000 prisoners so engaged in 1923; that more than 19,000 prisoners were engaged in the production of clothing alone in 1932 as against 10,000 in 1923.

More than 19,000,000 work shirts were manufactured in prisons and sold in the open market in 1932 in competition with approximately 62,000,000 work shirts made by free labor. There were sold upon the open market in 1932 more than 3,000,000 brooms in competition with private broom factories, in which blind labor was very widely used. More than 63,000,000 pounds of binder twine alone were so produced in 1932, and sold in competition with 158,000,000 pounds of such twine produced by private industry with free labor.

The Department of Labor's report covered many industries. The few given above will show the extent to which prisons and prison-made goods compete with industry and free labor.

On October 12, 1934, the President appointed a special committee and directed it to make an investigation with respect to the competition of the products of prison labor with the products of the cotton garment industry.¹⁹ This committee on November 26, 1934, made public its report, after a thorough investigation of the effect of the sale in the commerce of the United States of convict-made goods. The committee in its conclusions stated:

19 Order No. 118, 135 (1934).

The only true solution of the prison labor problem is one that will effectually remove the products of prison labor from the ordinary channels of competitive trade and commerce.

For many years penal institutions have emphasized the production of cotton garments under a contract system and have marketed their products at prices which outside shops found difficult to meet. Prison labor competition made the maintenance of any standards in the industry outside progressively difficult, and forced the manufacturer into out-of-the-way places where child labor, night work, long hours and poor pay became the rule. It has been impossible in the past for the industry to achieve stability, to increase its wages, or to improve its standards, because of the lower costs of prison manufacture. The prison contractor had the advantages of free rent, light and heat, of low labor costs, and of a controlled labor force—there is ample evidence in the history of prison contracting that the disciplinary machinery of the institutions was often used to inflict physical punishment upon the prisoner who failed to complete his allotted task. This prison contractor supplied work for the prisoners and in one way or another added emoluments to the agents of the State who were participants in the execution of the prison labor contract. The system served the contractor and the prison administration. It was, however, in many instances a bane and a curse in the lives of the prisoners, and the low-priced products kept wages down and the standard of living below a decent level for the workers outside.

The gain for labor. It is clear that the federal government had sufficient data, as well as ample reason to justify restricting the use and sale of prison-made goods. This legislation was a definite gain for labor in two ways: (1) it focused public attention to the use of prison-made goods and (2) it was a step forward in the regulation of interstate commerce where such commerce directly affected intrastate business.

Finally, probably the most important of all, came the Federal Social Security Act, approved by the President on August 14, 1935 and amended by Congress in 1939. This Act is not surpassed in its importance to labor, as it provides a means whereby states may create unemployment compensation systems and

will eventually assure to every worker an income during his old age.

Title I of this Act provides for grants to states for old-age assistance.

Title II provides for a federal old-age annuity system. This is a contributory plan, and after December 31, 1936, contributions will be made by both the employer and the employee to finance it.

Title III of the Act provides for grants to states having approved systems of unemployment compensation.

In addition to assuring security for the workers, the Act provides for assistance to needy dependent children, grants to states for maternal and child health services, public health services, and aid to the blind.

In less than two years after the federal government had passed the Social Security Act and created the National Labor Relations Board to serve as an example, the states on the whole passed similar legislation.²⁰ As a result of the legislation passed in 1936 and 1937 every state now has an unemployment-compensation act, and forty-seven states have passed laws authorizing old-age assistance. Legislation was also passed covering vocational training, apprenticeship, and related subjects.

Quite a different turn has taken place during this time in the field of hours-of-labor and minimum-wage legislation. Heretofore laws regulating hours and wages have been confined to women and minors. But now Pennsylvania has enacted a law providing for a 44-hour week covering all employees, and in Oklahoma a minimum-wage law was adopted affecting men, as well as women and minors.

State laws granting the right to bargain collectively. In the field of labor relations the states likewise passed laws similar to the National Labor Relations Act. These laws established

²⁰ During the legislation year of 1937 all of the state legislatures were in session except those of Louisiana and Mississippi. Alaska, Hawaii, and Porto Rico also held sessions during the year.

the right to bargain collectively for employees engaged in strictly intrastate employment.²¹ Laws were also enacted providing for the arbitration and mediation of labor disputes and the protection of employees from coercion and intimidation.

Law regulating hours of work for both men and women. By 1938 six states had enacted legislation on the subject of hours of work for both men and women. Colorado limited the hours of work of pharmacists so as not to exceed an average of nine hours a day and not more than 108 hours in any two consecutive weeks.²² North Carolina enacted laws regulating the hours of labor of men, women, and minors.²³ This law made it illegal for women to be employed for more than 48 hours a week, nine hours a day and six days a week. Men may not work for more than 55 hours a week, ten hours a day, or twelve days in any consecutive fourteen. There are, however, so many exceptions, such as emergency and seasonal employments, that the law is shorn of much of its effectiveness.

The Pennsylvania legislature on the other hand passed a much more comprehensive Act.²⁴ This Act regulated the hours of labor of all employees in the state, limiting them to 44 hours a week, eight hours a day, and five and one-half days a week. This law also makes great exceptions, but in different classes of labor. It does not apply to agricultural labor, domestic servants in private homes, or persons over 21 years of age and earning \$25 a week or more in "executive" positions or in the "professions." The Department of Labor and Industry may grant "further" exemptions. In Washington the legislature regulated the hours of labor of domestic employees to 60 hours a week.²⁵

21 Such laws were adopted in Mass., N. Y., Penn., Utah, and Wis.

22 Ch. 165, Gen. Laws of Colo. (1937).

23 Ch. 406-409, Gen. Laws of N. C. (1937).

24 Act No. 567, Gen. Laws of Penn. (1937).

25 Ch. 129, Gen. Laws of Wash. (1937).

A number of states made changes in old laws or added new ones regulating the hours of labor of women and children during 1937.²⁶

Colorado also passed a rather specialized law²⁷ regulating the bituminous coal mining industry of the state and providing for the establishment of codes of fair competition. According to this statute the employees must be permitted to organize and bargain collectively through representatives of their own choice, and they are assured freedom from interference, restraint, and coercion from any source whatever. "Yellow dog contracts" are also prohibited.

The statute of Nevada²⁸ provides that combinations of workmen or laborers may represent employees in labor disputes. Utah takes a step in another direction in an attempt to protect the employee. The Utah law requires employers, at the request of an employee, to pay not more than three per cent of the employee's wages to labor organizations.²⁹

The "sit-down" strike. The last technique used for labor is the technique known as the "sit-down" strike. Such strikes were first popularized in this country by the Akron rubber workers in 1935 and 1936. These first strikes for the most part were what is known as "quickies", but they led to the big Goodyear Strike early in 1936. The United Rubber Workers is a C. I. O. union.

Sit-down strikes began during the depression in a sporadic way in Great Britain, Scotland, and other European countries. Welsh, French, Polish, Hungarian, and Yugoslavian coal miners, Spanish copper miners, Polish rubber workers, Grecian

26 Arkansas Act 83; Conn. Gen. Laws, p. 437; Ill. Gen. Laws, p. 550; Mass. Gen. Laws, Ch. 153; Nevada Gen. Laws, Ch. 207; N. H. Gen. Laws, Ch. 200; N. J. Gen. Laws, Ch. 70; New York Gen. Laws, Ch. 281; Ohio Gen. Laws, Ch. 287; Penn. Gen. Laws, No. 322; Vermont Gen. Laws, No. 177.

27 Ch. 195 of Gen. Laws of Colo. (1937).

28 Ch. 206 of Gen. Laws of Nevada (1937).

29 Ch. 57, Utah Gen. Laws (1937).

tobacco workers and Indian textile workers engaged in sit-down strikes, sometimes coupled with hunger strikes.

However, the world's first sit-down strike on a large scale was the series in France which ushered in Premier Blum's Socialist government in May, 1936. At one time, 1,000,000 French workers, in various cities, held possession of plants in several different industries and trades.

One of the most essential parts of the technique of the sit-down is the element of surprise. If carefully planned in advance, the strike is usually scheduled to begin at the time shifts are changed. In this way the union can draw men from both shifts to stay in the plant. If the union is not well organized, only the union members on the day shift are notified that a sit-down strike will be called when the next shift comes on duty. The union men from the earlier shift then wait until the non-union men have left, and sit down with the unionists on the later shift.

Quick sit-downs formerly were known as stoppage. They have been common for some years in the coal industry and garment trades which form the backbone of John L. Lewis' Committee for Industrial Organization, the American labor group chiefly identified with the sit-down strike. The first overnight stay-in strike in the American automobile industry took place in the Bendix parts plant at South Bend in November, 1936. It started as a quickie to protest company-union practices, but shifted to a sit-down after the company ordered the men out of the plant.

The C. I. O. and the auto industry. The achievements of the C. I. O. have been greatest in its organization of the automobile industry. Early in 1936 the U.A.W.A. had a total membership of only 30,000 or 40,000; by fall of the same year it had reached only 80,000. Since the General Motors strike it has leaped to about 300,000. By April 1st of 1937, the U. A. W. A. had completed the organization of the Chrysler Corporation, and by April 6th, after almost a month of a continuous

stay-in strike, the difficulties were settled in favor of the strikers. The Chrysler Corporation, under one of the provisions for settlement, states, "The Chrysler Corporation recognizes the United Automobile Workers of America as the collective bargaining agency of its members who are employed by the firm, and promises not to interfere with employees joining the union nor to discriminate against members, promote or finance any labor group or organization, or any other union which might undermine the United Automobile Workers."

By 1937 the C. I. O. had completely organized the 200,000 General Motors employees and the 67,000 Chrysler employees, as well as all the major independent automobile companies with the exception of Pierce-Arrow.

Before the General Motors strike, the U. A. W. A. consolidated its organization, usually through strikes, in a number of small but important supply plants. The Bendix strike was the first. It was followed by strikes in Midland Steel, Aluminum Company of America, National Automobile Fibers, and Kelsey-Hayes Wheel Company. During and since the General Motors strike, the union has organized the Briggs Manufacturing Company, the Motors Products Company, the Timken-Detroit Axle Company, the L. A. Young Spring and Wire Company and the Bohn Aluminum Company, all important parts manufacturers, and hundreds of smaller plants.

The technique of the sit-down has been well developed in a military sense. Each plant has what is called a "department for defense." A special committee surveys the plants for weak points and takes special pains to guard them against invasion. Barricades are put up wherever needed. Weapons are gathered from the company's stock of fire hoses and extinguishers and canes, door hinges, wrenches, nuts, bolts, and other missiles that are available in the plant.

Problems and issues presented by sit-down strikes. While the problems which the sit-down posed for industry and labor are complicated and varied, yet the issues which it raises for the

public are much more vital and fundamental. Such a strike is regarded by both industry and a good share of the public as not only an illegal trespass on company property, but an unwarranted exercise of economic power, in which the strikers defy the local police, sheriff, mayor, and the governor. In the case of the General Motors strike, they defied the courts, not to mention a great body of public opinion which desired to go on living and working under an organized system of society and government. While the issues raised so far have been discussed in the terms of the conflicting interest of industry and labor and from this point of view the main problem is that of property and rights, nevertheless, the public is concerned—legally, politically, and economically. As industry sees it, the sit-down involves a clear and simple case of seizure of property in open violation of law. Too, the C. I. O. no longer attempts to defend the legality of the sit-down but tries to justify the use of an admittedly illegal technique on moral and ethical grounds. It holds that the end justifies the means; the end being the improvement of the worker's wages, hours and working conditions against the refusal of industry to grant the right of collective bargaining. Human rights, according to this point of view, supersede property rights. Industry, on the other hand, contends that it is a communist organization, bent upon the idea of creating economic disturbance and political chaos. So far, the sit-down movement has been apparently mainly a revolt of workers, skillfully organized and led, to correct the abuses of the old economic order and to gain a little more of the "more abundant life" that has been promised them by every new national administration since the turn of the century.

How far the sit-down strike will go in America is very speculative. On February 27, 1939, the Supreme Court rendered an opinion that would seem to outline a procedure to restrict not only the rulings of the National Labor Relations Board, but commission government generally to the confines of the Constitution. The opinion was the result of the *Fansteel*, *Columbian* and *Sands* cases. Among other things the court

held that when workers participated in a sit-down strike they were outside their constitutional right, and therefore the N. L. R. B. could not compel the employer to reinstate them. In the week following that decision, in every important industry which had been bothered by a sit-down strike, the employer discharged and dispossessed the strikers.

It would seem that here in America we still have a long way to go in our philosophy of private property before public opinion will approve the sit-down strike. To be used effectively as a force of labor, both the courts and the public must approve.

CHAPTER III

LEGISLATION AND ADMINISTRATIVE ORDERS AFFECTING LABOR RELATIONS

Employment service. The problem of employment service, though now largely controlled by state and federal legislation, is still an important issue to both employee and employer. The federal government, until the National Labor Relations Act, did not operate much in the field of employment. It did assist immigrants to get farm jobs, a service begun in 1907 and expanded somewhat to cover other persons and grades of labor. Why the government failed to assist employment for so long is hard to understand, unless one investigates the political system operating parallel with the employment situation. Douglas has estimated that for the thirty-year period (1897-1926), unemployment in manufacturing, transportation, the building trades and mining combined averaged 10.2 per cent of the workers attached to these industries. In no year during this period did it fall as low as 4 per cent and only in four years was it below 5 per cent.¹ The U. S. Department of Labor has estimated that in no year from 1921 to 1927 did the average number of the unemployed in all industry fall below a million and a half. And in 1921 the average rose to more than four million.² By March, 1933, a conservative estimate would put the number of those out of work at the unprecedented total of between 13 and 14 million, and as late as the middle of 1936 the number of jobless was still as high as 9,500,000.³

1 Douglas, Paul H., *Real Wages in the United States, 1890-1926* (1930), p. 456.

2 Givens, M. B. and Wolman, Leo, *Recent Economic Changes*, Vol. ii (1929), p. 478.

3 These figures are approximately those released by the National Industrial Conference Board. The A. F. of L. estimated 12,183,000 unemployed in 1936.

Causes of unemployment. The very nature of American business, together with many other factors, makes for unemployment. It will probably be a permanent problem, with no relation to business depressions. Business failures close the doors of many plants during the year. Occasionally industries are wiped out by new discoveries and inventions, resulting in new products, changing customs and consumers' needs. A shift of industries from one part of the country to another, experienced in the shift of textile industries from New England to the South, throws older wage earners out of work. Some industries are highly seasonal, which causes a shift in a great number of workers.

The laborer's loss from irregularity is many-fold. To the worker the immediate loss of wages is probably the most distressing, but to society, the loss of the laborer's morale, habits of irregular work, and lapse into destitution is a problem of far more importance. "Unemployment is a culture bed for pauperism and all of its accompanying evils."⁴

Need for legislation. This general statement of the disaster and waste that accompany unemployment will only indicate the need of legislation and preventive measures. The federal government recognizing this, then, in order to have man power and also to secure workers for war industries, established a federal employment service in January, 1918.⁵ Employment offices were established in states where there had been none; additional offices were opened in states which had one or more in operation; and the whole number was brought under federal-state management. President Harding after the war urged legislation to establish a federal-state employment service; bills drafted to do so were presented at each session of Congress, but indifference rather than opposition prevented enactment

⁴ Commons, John R. and Andrews, John B., *Principles of Labor Legislation*, 4th Edition (1937), p. 3.

⁵ D. H. Smith gives a very good account of this service: *The United States Employment Service*, Monograph 28, Institute of Government Research (1923).

until 1931. During that year the Wagner Bill (S. 4157) was passed but was vetoed by President Hoover, who wanted an outright federal system.

The older parts of the system were maintained in the reorganization plan. New offices were located in the several states. "They were located in the several states with more reference to the residences of directors and the wishes of Congressmen than to needs or to the presence of acceptable state offices already in operation . . . most of the personnel was poor because it was outside of the civil service and usually selected in view of political considerations."⁶ The general offices were abolished in 1933, and from all reports the abolition was quite justifiable.

Congress passed the Wagner-Peyser Bill, and it was approved by the President June 6, 1933.⁷ The Act provides for the "establishment of a national employment system and for cooperation with the states in the promotion of the system." The bill further provides that the Bureau of the U. S. Employment Service is to "assist in establishing and maintaining systems of public employment offices in the several states."⁸

The federal standards included civil service specifications for personnel, tenure of office independent of political influence, and standardized methods of accounting and reporting. Many provisions were required, all of which were designed to provide an efficient employment service.

The United States Employment Service during the first thirty-three months of its existence made 14,500,000 placements. The employment offices had registered and classified nearly 25,000,000 applications, and the active files contained the names of more than 4,000,000 persons seeking employment.⁹

⁶ Millis, Harry A. and Montgomery, Royal E., *Labor's Risks and Social Insurance* (1938), p. 46.

⁷ Public Doc. No. 30, 73d Congress (S. 510).

⁸ *Ibid.*, Sec. 3 (a).

⁹ *Employment Service News*, May, 1936, p. 2.

The present Employment Service. Under the "New Deal" the Wagner Bill has had a vital part in all "relief" legislation, W.P.A., P.W.A., and all works sponsored or partially sponsored by the federal government. Its greatest work is now being effectively administered under the unemployment and retirement sections of the Social Security Act passed by Congress in 1935.

Another aid to the working man that should be mentioned in considering legislation that has attempted to give the individual wage-earner increasing privileges and to place him more nearly equal with his employer is Legal Aid and Industrial Courts. Technically, it is true that the poor man has a "right" to our courts of justice that are "free". But a "free" court of justice has proven to be many times beyond the financial reach of the average worker. Lawyers do often give their assistance without charge, but a lawyer can hardly be expected to give the same service for nothing that he would give for a fee. Too, many of the grievances of the worker involve small amounts which do not justify either the employment of a lawyer nor the time and expense of our regular court costs, such as fees for filing, serving summons and subpoenas and for attaching property, and fees to clerks of courts in contested cases. To the man with a small amount of wages held out by his employer or an assessment for any cause, the remedy costs more than the amount lost.¹⁰

The first legal aid society in America was started in New York (1875) by German merchants to help poor German immigrants. From New York, legal aid societies have spread into some sixty American cities and thirty different states.¹¹

In many states labor departments have been given special powers to assist workers in collecting unpaid wage claims, and all states have what is known as the "Artisan and Mechanics"

10 See "Work of State Labor Office in Behalf of Wage Claimants", U. S. Bureau of Labor Statistics, *Monthly Labor Review*, Oct., 1933, pp. 776-790.

11 Smith, R. H. and Bradway, J. S., "Growth of Legal Aid Work in the U. S.", U. S. Bureau of Labor Statistics, *Bulletin No. 607* (1936).

Lien Law. Most states also have passed legislation regulating the payment of wages.¹²

The Courts of Small Claims, as they are most often called, grew out of the conciliation court of Cleveland, Ohio. The latter developed out of a provision in the Municipal Court Act, designating a clerk to assist persons unable to hire a lawyer in preparing papers, and if possible to bring about a settlement.¹³ The services were free. Since 1913 a conciliation branch of the court has been in operation. The court does not confine itself to disputes arising out of labor contracts but includes all small claims. By 1936 small claims courts had been established by state law in sixteen states and by local action in four large cities in other states.¹⁴ The action of cities is granted them by the states in form of charters.

The future of legal aid and industrial courts. So far, legal aid in the United States is entirely a private enterprise and has been restricted to a few of the larger cities. Industrial courts are becoming more important, and it seems fair to predict that with the attention of state and national governments focused upon industrial legislation, industrial acts and codes, the development will be in that direction.

Rights of self-organization. The creation of adequate agencies for collective bargaining is of utmost importance, but equally as important is the establishment of certain rights of self-organization which should be specifically defined and rigidly

12 A good example of legislation along such lines is found in California's Payment of Wage Act (*Calif. Laws*, 1919, Ch. 202, as amended), which provides for immediate payment of wages due upon discharge and for payment within three days to an employee who quits. All other wages must be paid twice a month on regular pay days. If an employer willfully refuses to pay wages due, the wages shall continue at the same rate until paid, for not longer than thirty days. It is the duty of the Labor Department to enforce the Act.

13 Commons, John R. and Andrews, John B., *Principles of Labor Legislation*, p. 369.

14 Cal., Colo., Conn., Idaho, Iowa, Kans., Mass., Minn., Nev., N. J., N. Y., Ore., R. I., S. Dak., Utah and Vt. The cities are Chicago, Cleveland, Philadelphia and Spokane.

enforced. It is well to remember that the employee always must work. It is a mistaken idea that if a laborer does not like his job he can quit. He may not even be able to leave one employer without suffering some kind of want. The employer, through the strength of capital and company unions, has had an advantage. Furthermore, the employer derives a bargaining advantage out of the fact of company labor organizations. The history of company unions shows that they have been less successful in obtaining for the worker the same advantages that have been obtained by non-company unions. Strikes are expensive and must be financed, and without a workable treasury they can seldom be successfully carried on. The fact of isolation alone of the company union deprives it of the moral and material support it needs from other labor organizations. Collective bargaining cannot be attained when one party has superior economic power. The frequent use of the strike may be condemned, but the power derived through the right to strike when necessary is a prerequisite to successful collective bargaining.

Need for regulatory legislation. Under collective bargaining with which the employer is not in full sympathy industrial disputes may be expected which will always lead to strikes, walk-outs, or lockouts. It is of real importance then to regulate the conduct of these active disputes by simplifying and enforcing the existing laws and by the passage of additional legislation whenever necessary.

At present there are four main agencies of the federal government for adjusting labor relations and settling disputes. These are:

1. The National Labor Relations Board.
2. The Conciliation Service of the Department of Labor.
3. The National Mediation Board.
4. The National Railroad Adjustment Board.¹⁵

¹⁵ These agencies deal only with labor and industry in or affecting commerce. Many states have now established boards of arbitration and mediation to deal with intrastate labor. New York, for example, has both a board of mediation and arbitration.

In addition to these, there are special emergency boards of inquiry and fact-finding set up by the government which often exert great influence on the adjustment of labor disputes.

Before the strike of 1902 was actually declared, the United Mine Workers of America offered to compromise or to arbitrate the issue, but the corporation flatly refused this offer.¹⁶ Enormous losses were incurred by both sides, and the coal shortage intensified the opposition of the people and the press to the cause of the operators, so much so that in a letter addressed to the public in 1903, the operators suggested the appointment of a Commission by the President to which should be referred all questions at issue between the respective companies and their respective employees whether they belonged to the union or not, and the findings of which should be binding on all concerned for a period of three years. It was suggested that the proposed Commission be constituted as follows: (1) an officer of the engineer corps of either the military or naval service of the government; (2) an expert mining engineer experienced in the mining of coal and properties, either anthracite or bituminous; (3) one of the judges of the United States Court of the Eastern District of Pennsylvania; (4) a man of prominence, eminent as a sociologist; and (5) a man who by active participation in mining and selling coal was familiar with the physical and commercial features of the business.

The Coal Commission of 1902. President Roosevelt at once undertook the task of using this offer as the opening of a road toward peace for which he had worked before but in vain. He first sent for Mr. John Mitchell. The mine workers' leader protested against arbitration which, in his opinion, would be by a one-sided board, but it was said that he was assured by the President that in appointing the arbitration board, he (the President) could satisfy the conditions stipulated by the operators and yet secure men who could be depended upon to be

¹⁶ This subject is thoroughly dealt with in Chap. VI, "The Government and Industrial Disputes in Coal."

unbiased.¹⁷ Mr. Mitchell agreed to this, and the President named as the Commission Brigadier-General John M. Wilson, E. W. Parker, Judge George Gray, E. E. Clark, Thomas H. Watkins, Bishop John L. Spalding, and Carroll D. Wright, who also acted as recorder. These names were found to be satisfactory to the operators and the mine workers. After extensive hearing and somewhat intensive investigation of conditions in the field, the Commission made its report and published its awards on March 18, 1903.

The Anthracite Coal Commission of 1902 provided a system of conciliation and arbitration for the settlement of disputes and grievances arising during the term of its awards, and also suggested a plan of organization and representation which would permit the miners and operators to carry on collective bargaining in the future.

1. It provided a general plan of conciliation: a permanent joint committee to be called a Board of Conciliation, to consist of six persons—three representatives of the mine workers and three representatives of the operators.
2. If, however, the Board was unable to come to a decision, the disputed points would be referred to an umpire, to be appointed at the request of the Board by one of the circuit judges of the Third Judicial Circuit of the United States. The umpire's decision was to be final and binding.

During the last quarter of a century, this award and the subsequent agreements amending and extending it, have governed wages and working conditions in the industry.

The general plan of conciliation and arbitration was to deal with any difficulty or disagreement arising under the award, and with subsequent agreements, as to either their interpretation or application, in any way growing out of the relation of the employers and the employed. What was to be done at the termination of the award? The answer is either to extend the

¹⁷ The miners and the operators agreed to accept the word of an arbitration commission after President Roosevelt sent Elihu Root, Secretary of War, to confer with the anthracite operators.

award, or to make a new agreement. No provision was made, however, for that eventuality beyond a mere suggestion.

The Commission suggested a plan of labor organization and representation which would permit the miners and operators to carry on collective bargaining in the future. In other words, it advocated the making of trade agreements by joint conference. Leaving out of consideration the various unsuccessful attempts to employ joint conference methods in 1902 and 1903, as well as in the prior history of industrial relations in the anthracite field, it might be said that the joint conference as a method of establishing relations between employers and employees was not practiced in the anthracite industry until the Anthracite Coal Strike Commission's awards expired in 1906. The trade agreements of 1906, 1909, 1912, 1916, 1917, 1918, 1919, and 1920 were the results of the joint conference methods because they were negotiated by duly accredited representatives of the opposing forces. It is true that "peaceful suspensions" of work occurred during this period, but these suspensions were not used as a weapon to compel the operators to come to terms by tying up the industry, but as a means of arousing popular apprehension and enlisting public support. Emphasis is, however, to be given to the fact that the agreements have to a considerable degree been mere renewals of the 1903 awards.

Principles of the joint conference. The following principles are considered fundamental to the proper functioning of the joint conference:

1. The right to organize and to bargain collectively;
2. The right of representation in negotiations;
3. The use of compromise in making agreements;
4. The inviolability of contracts and joint representation in enforcement.

The representatives of the miners have usually been selected from the district officials and executive boards of the anthracite districts, with the international president and vice-presi-

dent as spokesmen. This gave them a committee of thirty-five or more members.

The representatives of the operators on the joint conference committee are selected by a general meeting which independent operators are privileged to attend and they are given a minority representation. Until 1912, business was carried on in the main conference, but in that year it was referred to a small sub-committee. In recent years, the negotiations for wage agreements have been carried on by the board of conciliation and one additional member from each side. This board was originally established for the purpose of dealing with disputes arising under the agreement.

One of the main purposes of establishing the joint conference was to eliminate general strikes. This purpose has been largely fulfilled through the agreements which have been made from 1902 to 1922. Both the miners and the operators agree that suspensions also should be eliminated, but they differ in regard to the methods which should be employed to accomplish that result, and, as yet, they have failed to agree upon a method.

The agreement of 1926. The nearest approach to prevent suspension and strikes was made in the agreement of 1926, when the miners sanctioned a provision for voluntary arbitration if the representatives of both parties can agree upon an arbitrator. But the miners still retain their right to strike if negotiations fail.

The disputes arising from the agreements thus made are referred to the board of conciliation for settlement, and in the case of an impasse, to the arbitration of an umpire. Since 1909, certain preliminary steps have been made binding, and in 1912, grievance committees were established.

No government control of steel until 1937. In contrast with the agencies in control in the anthracite coal industry, there was the complete lack of any government control in the steel industry. Up until 1937 there was no collective bargaining and no making of trade agreements by joint conference. Public

opinion does not seem to have had a great deal of influence on problems in the steel industry. The federal government has been satisfied with the reports of its commissions of investigation without doing any further constructive work. On the other hand, private or semi-private investigations have severely condemned the conditions existing in the industry and the policies pursued by the United States Steel Corporation.

President Wilson's Industrial Conference of 1919 might be considered an indirect result of the threatened strike in the steel industry, but its failure left the problem of legal control still unsolved. All indications are now that the steel industry will be subject to restrictions, legislation, and the activities of arbitration boards as a means of controlling industrial relations. The S.W.O.C. and the C.I.O. have signed them to independent unions.¹⁸

The anthracite strike of 1922. As a result of the strike of 1922, the anthracite industry was operating under a wage contract effective until August 31, 1923. Negotiations for a new contract were opened between the operators and miners in the usual way some months before the date of expiration. The miners demanded increased wages, payment on the basis of 2,240 pounds to the ton, time and a half for overtime, and double time for Sundays and holidays.¹⁹ All these demands affected wage payments in one way or another. The demand that wage schedules be brought up to date pointed to the failure of previous agreements. The miners felt that an increase had been due them in 1920. To expedite the adjustments of disputes, the demand contained the provision: (1) that mine committees should be authorized to meet with company officials and "agree upon rates for new work before such work is commenced;" (2) that cases referred to the umpire when the Conciliation Board could not agree should be decided within

18 See Chapter III for a discussion of the organization of steel, S. W. O. C., C. I. O., and collective bargaining.

19 Suffern, A. E., *The Coal Miners' Struggle for Industrial Status* (1926), p. 120.

thirty days, and that a decision should be "based upon equity if requested by the complainant." The demand for decision based on equity was an expression of impatience with decisions upon past precedents and conditions.²⁰ In addition to these wage demands, the miners also demanded "complete recognition" of the union. This referred to the desire of the union to apply for the check-off.

The operators refused the increases in wages demanded by the miners, and would not grant the check-off. The joint conference came to a deadlock, and negotiations were broken off on July 27, 1923. Meanwhile, after protracted negotiations and failure to make a new agreement before the expiration of the old one, the miners suspended work. Finding that neither party was taking steps to reopen negotiations, the United States Coal Commission conferred with representatives of the operators and the mine workers to learn the points of dispute between them, to point out the public interest in a peaceable settlement, and to urge that negotiations be resumed under some plan that would keep the mines in operation until an agreement had been reached.²¹ The Commission immediately held separate executive sessions with the representatives of the United Mine Workers of America and with the representatives of the operators. After several meetings, the following facts were disclosed: that the operators were willing to submit to arbitration the questions in controversy between them; that if the Commission could not be mutually agreed upon, then the President of the United States should be requested to appoint the arbitrators; and that in such an arbitration it should be understood that no downward revision of the wage scale should be made. On the other hand, the representatives of the miners refused to consent to such or to any arbitration, assigning as a reason that in all arbitration before this, they had not received just and fair treatment; that the history of arbitration showed that it was the resort of the "under dog"; that in the past, when-

²⁰ *Ibid.*, p. 121. See Chapter II, p. 52.

²¹ *Report of the United States Coal Commission of 1923*, Part I, p. 139.

ever the operators thought that they had the upper hand, they had refused arbitration, nor was this in a relatively remote past; that within the past year or two in controversies in the coal industry that had gone to the point of a strike, and in which the miners would have been the weaker party if the outcome were left to economic forces, they had asked for arbitration but had been unable to secure it. The miners held, therefore, that it was unfair to endeavor to coerce them into arbitration now in a case in which they had enough economic strength to win the wages and conditions to which they believed themselves entitled.²² The Commission further found that there was mutual distrust in each party toward the other; that through the long struggle of preceding years in the industry there had grown up a feeling of suspicion which made the adjustment of difficulties and the working of contracts an exceedingly serious problem.

Governor Pinchot calls a conference and an agreement is reached.

After the Commission's efforts at mediation failed to avert a suspension of work, the miners and operators were called into a conference at Harrisburg, Pennsylvania, on August 27th, 1923, by Governor Pinchot who succeeded in inducing them to reach an agreement. The following basis of settlement was accepted:

1. Recognition of the basic eight-hour day for all employees.
2. A uniform increase of ten per cent to all employees.
3. Full recognition of the union by the operators, without the check-off, but with the right to have a union representative present when the men are paid.
4. Complete recognition of the principles of collective bargaining.

These terms, with some modifications, were accepted by the two parties on September 8th, and on September 19th work was resumed at the mines after a suspension of fourteen days. This agreement extended until August 31, 1925.

²² *Ibid.*, p. 142.

There was no legal control in the two industries in the sense that the main differences between labor and capital are taken up in joint conferences. If they come to an agreement, well and good; if not, then one side or the other will resort to drastic measures in the form of a strike or a lockout.

The legality of boards of conciliation. In the anthracite industry, as has been stated, a board of conciliation and an umpire were set up by the Commission of 1903 to function under the agreement. They are legal bodies, it seems, originated in the contract commonly called the agreement binding the two parties. All disputes under the agreement are taken care of by the Board and the umpire.

A reading of the award of 1903 leaves one with the impression that the Commission intended these bodies to be legal, and their decisions binding. "The Commission is of the opinion that some satisfactory method for adjustment of grievances which may arise from time to time, to the end that strikes and lockouts may be unnecessary, should be imposed by its award upon the parties to this submission."

The Commission further adjudges and awards: that the awards herein made shall continue in force until March 31, 1906; and that any employee, or group of employees, violating any of the provisions thereof shall be subject to reasonable discipline by the employer; and further, that violation of any provision of these awards, either by employer or employees, shall not invalidate the provisions thereof.²³

In 1906 this award was extended, and during the last quarter of a century the award and subsequent agreements amending it and extending it have governed wages and working conditions in the industry.

Both parties in the agreement feel that the decision of the Board and the umpire is binding. Over six hundred grievances were referred to the Board and the umpire, and of these, there has been disagreement over only one decision.

²³ *Ibid.*, p. 156.

The ability to enforce decisions. The ability to enforce these decisions is due, first, to the measure of authority attached to the awards of the Commission by its governmental character. The fact has not been forgotten that it was a body named by the President of the United States. In the second place, the umpire is selected by the Federal Circuit Judge. Thus, the arbitrators of disputes are in a sense representatives of the federal government and of the judicial branch of the federal government. The result has been that their decisions have been regarded as possessing the weight and finality of judicial decisions.

Mr. Harold G. Moulton, the Director of the Institute of Economics, in the preface of Mr. Suffern's work on *The Coal Miner's Struggle for Industrial Status*, asserts that the long struggle of contending groups has resulted in profound changes in the legal as well as in the economic and social positions of masses and classes. Out of the struggle for collective bargaining, higher wages and improved working conditions, has come a definitely new industrial status for the mine workers. In agreements that have been reached in the joint conferences between mine owners and workmen, a body of industrial principles is being evolved much as legal principles in other fields have been developed.

In discussing the nature of the evolution of law in general, Justice Cardozo points out that "fundamental conceptions once attained, from the starting point from which are derived new consequences; which at first tentative grouping gain by reiteration a new permanence and certainty, in the end become accepted themselves as fundamental and axiomatic. At least, there emerges a rule of principle which becomes a datum, a point of departure, from which new courses must be measured."

The development of federal intervention. Historically, special agencies for federal intervention in labor disputes date back to 1888 when the President was authorized by an Act of Congress to: (1) appoint an independent commission to make public investigations; (2) provide an arbitration board where

the parties were willing to arbitrate.²⁴ Ten years later the Erdman Act, among other things, provided for mediation machinery for the adjustment of labor disputes. Functionally, the two commissions were similar as their powers were limited to voluntary arbitration, mediation and conciliation with respect to railroad labor troubles. The Newlands Act of 1913 created a permanent board of mediation. The Adamson Act provided for an eight-hour day for railroad trainmen. Beside fixing eight hours as the standard for a day's work, the Act prohibited the reduction of wages until an investigating commission created by the Act had reported.²⁵

Earlier in the same year, the Department of Labor was created as a separate department. Among other duties, the secretary was to have the power to act as mediator and to appoint commissioners of conciliation in labor disputes. He endeavored to have the permanent board created by the Newlands Act placed under his jurisdiction, but organizations of both workers and employers prevented it. This appears to be an unnecessary duplication, as the conciliation service in the Department of Labor could and does perform similar functions.²⁶

The board of 1926. Agreements enforced in federal courts. During the War, when the federal government operated the railroads, four adjustment boards were set up to settle disputes. When the railroads were returned to the private owners, the Esch-Cummins Act of 1920 set up a Railroad Labor Board of nine members, three of whom represented the workers, three the carriers, and three the public. It was authorized to hold hearings and render decisions, but was given no power of enforcement. The Act failed to function satisfactorily, with

²⁴ *Government Protection of Labor's Right to Organize*, U. S. Printing Office, Washington, D. C. (1936), p. 48, testimony of William M. Leiserson.

²⁵ The Adamson Law and the Esch-Cummins Law are discussed in Chap. V "The Development of National Legislation Affecting Railroads."

²⁶ See Chapter V for a fuller discussion of these laws, as well as their application.

the result that in 1926 a new independent board was created. The only new feature of this board, the United States Board of Mediation, was that its arbitration agreements were to be enforceable in the federal courts. In 1934, still another independent board was created to supersede the preceding ones. The Act to amend the Railway Labor Act, approved April 19, 1934, created the National Mediation Board of three members which on July 20, 1934, superseded the U. S. Board of Mediation of five members. This new legislation did little more than reiterate the right of self-organization, outlawed the yellow-dog contract, and provided a means for the settlement of disputes concerning wages, hours, etc.²⁷ The Board and its predecessors have provided a means for arbitration and conciliation of railroad disputes, but they have had power to do little more than to offer their services. In every instance, the Board has been independent of any one department, even though the Department of Labor has a bureau that performs much the same type of service for all other industries that engage in interstate commerce.

Until very recently labor disputes were settled by rules and principles embodied and grounded principally in the common law, statutory enactments playing little or no part. Recent years, however, have at last brought a considerable body of statutory enactments.

Anti-trust laws as a restriction to labor. Of these, the most important are the federal anti-trust laws. In many courts these laws are treated as the chief restriction upon labor combinations. This, no doubt, tends to exaggerate their importance; but that labor unions have been increasingly restricted and their activities handicapped cannot be denied.

As to whether or not the Sherman Anti-trust Act of 1890 was intended to apply to labor unions has long been debated and subject to much controversy. In *Loewe v. Lawlor*,²⁸ the United States Supreme Court stated "that the Congressional

²⁷ U. S. Government Manual (1935), p. 179.

²⁸ 208 U. S. 274, 28 Sup. Ct. 301 (1908).

debates show that the statute had its origin in the evil of massed capital; but, when the Congress came to formulating the prohibition, they included every contract or combination in the form of trust, or otherwise, in restraint of trade or commerce among the several states or with foreign nations."²⁹

Labor Unions under the Sherman Act. Under the Sherman Act labor union activities were attacked within three years of its passage, and by 1894 there were altogether seven cases in which this statute was invoked against labor.³⁰ It is interesting to note that all but one of these cases grew out of railroad strikes, and all of them involved direct interference with the transportation of interstate commerce. The legal question in all these cases was simple. Does such interference constitute an illegal restraint of trade under the Sherman Act? In all of these cases it was definitely established that interference with transportation of interstate commerce by acts of violence does constitute such an illegal restraint of trade, whether done by union labor in an effort to gain its ends, or by an individual.

Though the Sherman Anti-trust Act was passed in 1890,³¹ the first nationwide interest was demonstrated in the American Railway Union Strike of 1894. At that time district judges held that this sympathetic strike was a violation of the Sherman Act, and the injunction out of which grew the historically famous Debs case was based upon this law.³²

The Danbury Hatters case. After the Debs case labor lost heart, and little was heard of the Sherman Anti-trust Act until

²⁹ The opposite point of view is reached in the exhaustive study made by Professor Edward Berman, *Labor and the Sherman Act*, Harper Brothers (1930).

³⁰ *Blindell v. Hagen*, 54 Fed. 40, 56 Fed. 696; *U. S. v. Workingmen's Amalgamated Council*, 54 Fed. 994, 57 Fed. 85; *U. S. v. Debs*, 64 Fed. 724; *Waterhouse v. Comer*, 55 Fed. 149; *U. S. v. Ogler*, 62 Fed. 824; *U. S. v. Elliott*, 62 Fed. 801, 64 Fed. 27, in re charge to Grand Jury, 62 Fed. 828.

³¹ Act of July 2, 1890, 26 *U. S. Stat. at Large* 209.

³² For a full account of the Debs case see Landis, James M., *Cases on Labor Law* (1934).

the U. S. Supreme Court decided the Danbury Hatters case in 1908. This case involved a suit for \$240,000 damages and its adverse decision was a severe blow to organized labor and alarmed them more than any other decision in this country. The defendants were members of a combination known as the United Hatters of North America and were combined with the American Federation of Labor. The plaintiffs were manufacturers of hats in Danbury, Connecticut, having a factory there, and were engaged in interstate trade in some twenty states other than the state of Connecticut. They were practically dependent upon such interstate trade to consume the product of their factory, only a small percent of their output being consumed in the state of Connecticut. The plaintiffs also contended that at the time the alleged combination was formed they were in the process of manufacturing hats for the purpose of fulfilling orders actually made with consignees in states other than Connecticut, and that the defendants were preventing them from carrying out their work, and they would therefore be unable to carry out their engagements.

Justice Holmes in delivering the opinion said, "It requires more than the blindness of justice not to see that many branches of the United Hatters and the Federation of Labor, to both of which the defendants belonged, in pursuance of a plan emanating from headquarters made use of such lists, (the circulation of a list of "unfair dealers"), and of the primary and secondary boycott in their effort to subdue the plaintiff to their demands . . . We agree with the Circuit Court of Appeals that a combination and conspiracy forbidden by the statute were proved, and that the question is narrowed to the responsibility of the defendants for what was done by the sanction and procurement of the societies above named."

The court, then, in substance, instructed the jury that if these members paid their dues and continued to delegate authority to their officers unlawfully to interfere with the plaintiff's interstate commerce in such circumstances that they knew or ought to have known, and such officers were war-

ranted in the belief that they were acting in the matters within their delegated authority, then such members were jointly liable and thus the hat manufacturer was allowed to collect under the treble damage section of the Sherman Act in excess of \$240,000.³³ It was as a result of this decision that labor began to fight vigorously for emancipation from the anti-trust laws.

The Hitchman Coal and Coke Co. case. During the next six years there were some twenty cases that arose in inferior federal courts in which the Sherman Act was invoked in connection with labor disputes. Most of them were unreported and never brought to trial, but all of them were commented upon with alarm in the labor papers. The case causing the greatest alarm and widespread comment was the decision of Judge Dayton in the Hitchman Coal and Coke Co. case. While this decision was later overruled by the Circuit Court of Appeals, it did, nevertheless, increase the fear felt in labor circles that the Sherman Act threatened the very existence of labor unions.

The Clayton Act passed in 1914. Labor believed it had removed the danger of the Sherman Act when Congress in 1914 passed the Clayton Act.³⁴ Section 6 of this Act declared:

That the labor of a human being is not a commodity or article of commerce. Nothing contained in the anti-trust laws shall be construed to forbid the existence and operation of labor organization, instituted for the purpose of mutual help, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organization be held to be illegal combinations under the anti-trust laws.

This same Act encouraged labor to believe that it had won relief from injunctions, at least so far as the federal courts

³³ The judgment with interest amounted to a total of \$310,000 but the Loewe Co. was in the hands of the receiver, and it was doubtful whether the property was worth more than \$234,000, the settled price.

³⁴ 38 U. S. Stat. at Large 730 (1914), 29 U. S. C. A. Sec. 52.

were concerned. This hope was based upon Section 20 of the Act.

That no restraining order or injunction shall be granted by any court of the United States, or a judge or the judges thereof, in any case between an employer and employee, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to property rights, or the party making the application, for which injury there is no adequate remedy at a law, and such property or property rights must be described with particularity in the application, which must be in writing and sworn to by the applicant or by his agent or attorney.

Labor's disappointment—the Clayton Act fails. The enthusiasm that labor had for the Clayton Act was maintained for about five years, insisting that the courts were misconstruing the Act when decisions went against them. In the end, however, the Clayton Act proved to be very disappointing to labor. It did not exempt labor from the anti-trust laws. There were as many successful prosecutions of workingmen under these laws after the passage as before.³⁵ Both Sections 6 and 20 of the Act, which labor had regarded as the most important, were construed by the courts as having made no change in the law as previously interpreted. As a matter of fact, in at least one respect, the Clayton Act made the position of organized labor distinctly worse because of a provision allowing private parties to obtain injunctions under the anti-trust laws against persons guilty of conduct in violation of these laws. Prior to the Act only the federal government could secure injunctions against unlawful restraint of trade. Section 16 provided that any private party injured through an unlawful restraint of inter-

³⁵ Among the more outstanding cases successfully prosecuted were *U. S. v. Bricklayers' Union*, 4 Law and Labor 95 (1922); *Curren Printing Co. v. Printing Council*, 5 Law and Labor 91 (1923); *Vandell v. U. S.*, 6 Fed. (2d) 188 (1925); *Coronado Coal Co. v. United Mine Workers*, 268 U. S. 295, 45 Sup. Ct. 551 (1925).

state or foreign commerce might maintain an injunction suit against persons guilty of such conduct.

Since the passage of the Clayton Act there have been many more cases against labor under the federal anti-trust laws than during the twenty-four years preceding. Many of the cases are unreported and unknown. Twenty-eight of these criminal prosecutions and injunctions were instituted by the federal Department of Justice, or by United States district attorneys.³⁶ Convictions were secured in more than half of the criminal cases tried, resulting in long prison sentences and heavy fines. Also more than half of the injunctions sued for have been allowed.³⁷

Labor campaigns for a new federal statute. In the beginning the American Federation of Labor had hailed the Clayton Act as "labor's Magna Charta" and "Bill of Rights." However, in its 1925 convention, labor frankly admitted that this Act had fallen far short of its expectation. It was at that convention that labor started a campaign to secure a new federal statute to restrict the issuance of injunctions in labor disputes by the federal courts. In 1932 this campaign bore fruit in the Norris-LaGuardia Act.³⁸ This Act was first introduced in Congress in 1930, and was designed to remove the worst abuses in the use of injunctions. It proposed to do this by: (a) specifying the procedure to be followed by the inferior federal courts in issuing injunctions in labor disputes; and (b) setting up

36 Witte, Edwin E., *The Government in Labor Disputes* (1932), p. 70.

37 The outstanding cases in this list are the Coronado Coal and Coke Co. case (cited in note 35, page 104), in which there was at one time a judgment of \$600,000 against the defendants. It was settled outside of court by payment of \$27,000. The suit was brought by the Southern Ill. Coal Co. v. United Mine Workers of America for damages sustained through the Herrin, Ill. "Massacre" of 1922. This suit was settled by the defendants' unions buying the plaintiff's property, at what was regarded as an exorbitant price. Another important case is that of the Decoration Stone Co. v. Building Trades Council, in which a jury for the Southern District of New York, in March, 1931, awarded \$43,000 damages and costs against three union councils which boycotted the plaintiff's non-union store.

38 47 U. S. Stat. at Large 70 (1932); 29 U. S. C. A. Secs. 101-115.

limitations as well as requirements as to the content of such injunctions, and in addition certain conditions under which injunctions should not be issued.

Public attitude and governmental intervention. However, in spite of all the governmental attempts at intervention in labor disputes, they have nevertheless come in for a great deal of criticism. There are but few parties who have interested themselves in the problem who are satisfied with the laws or the application of these laws dealing with labor disputes. There are, however, at least two laws that we can consider with some hope: one consists of the long and successfully tried Railway Labor Acts and the other the comparatively new National Labor Relations Act of 1935.

Strikes and their severity. The number of strikes have not diminished, and our record with regard to law and order in strikes is distinctly worse. It would indeed be hard to find another country in which violence is so common. Most of our important strikes lead to clashes between strikers and strike sympathizers on one side and guards, spies, and detectives on the other. Bombings, assaults, and murder have been frequent in our labor history. Violence is still very prevalent in labor disputes and adds greatly to their seriousness.

The Apex Hosiery case. On May 6, 1937, there began one of the numerous sit-down strikes. A lockout at the Apex Hosiery Company preceded the occupation.

On April 7, 1939, the Federal District Court at Philadelphia assessed \$711,932.55 against the American Federation of Hosiery Workers and its president for violating the Sherman Act.

There have been but few cases in which damage verdicts have been rendered against unions for violation of the anti-trust laws. The earliest instance was the now famous Danbury Hatters case, which was finally decided in 1915. In the Coronado Coal Company case damages assessed against the United Mine Workers were upheld by the United States

Supreme Court in 1922. The Bedford Cut Stone Company case was upheld by the United States Supreme Court in 1927. These cases set the precedent for the application to labor unions of the Sherman Anti-trust Act passed by Congress in 1890 as a curb on monopolistic business practices.

The facts involved in the Apex case and their development at this late date makes the case of unusual interest. The history of the case is as follows: after weeks of demonstration from hosiery workers in other mills the general manager closed the Apex plant and sent home its 2,500 workers. Conditions became immediately worse. Thousands of union men gathered in front of the plant. Then 250 workers pushed past police lines, broke down the doors and took possession of the factory. They stayed in it for forty-seven days. Several months after the strike ended, the union gained its objective—a closed shop.

The Apex Company acting under the Sherman Anti-trust law, sued the American Federation of Hosiery Workers and its officers for loss of profits, overhead expenses, and physical damage to plant and knitting machinery during the strike. A jury in the Federal District Court awarded damages to the amount of \$237,310.85. Judge Kirkpatrick trebled the assessment to \$711,932.55 under a provision of the Sherman Act.

The similarity of the Apex and the Danbury cases. The Apex Hosiery case is to be considered not only in the light of the above-mentioned cases, but also in the light of the broadened construction more recently given the “commerce clause” of the Federal Constitution by the Supreme Court in the National Labor Relations Act cases; and whereas the Apex case is similar to some of its predecessors, it is also dissimilar. It involves a situation in which the legal question of the application of the anti-trust laws is a much closer one than it was, for example, in the Danbury Hatters Case, or even in the most recent decision of the United States Supreme Court on the subject in the Bedford Cut Stone Company case. Also, it is the first instance in which the anti-trust laws have been sought as a means to prevent a sit-down strike.

For any conspiracy in restraint of trade to be held within the federal anti-trust laws, it is first necessary to determine that the conspiracy involves a restraint of interstate commerce.

The primary question of law. The primary question of law involved in the Apex case was whether interstate commerce was directly affected by the forty-seven-day sit-down strike at the Apex Company's plant. The strike was intended to stop manufacturing operations. It accomplished that. There apparently was no intention to restrain or control the supply of hosiery entering or moving in interstate commerce. The Apex Company produces only two or three per cent of the total national production of the commodity.

Should this decision by the Federal District Court be sustained by the United States Supreme Court, it would seem that labor's right to suspend operations would be greatly curtailed.

In America, with the concept of private property uppermost in the average man's mind, it would seem reasonable to assume that the sit-down as a weapon of labor has a long way to go. Public opinion as well as the courts would seem to be against it.

Labor's attitude toward the courts. A further fact to be considered is that labor historically has been dissatisfied with what is believed to be an unfair attitude of the courts in the application of laws to labor disputes. Upon the question of "injunction" there is no split between the C. I. O. and the A. F. of L.; labor is unanimous in its opposition to the injunction and critical of the courts. In the industrial struggle of the past half century labor has often found that our courts were willing to throw the forces of the state on the side of capital and become the protectors of property and property rights, while they disregarded the human aspirations and personal rights of the workers.

The worker was not alone in his critical attitude toward the situation, for many of our most eminent jurists and legal scholars have severely condemned the law and its application.

Among them are Justices Holmes, Brandeis, Frankfurter, and Chief Justice Taft, and Dean William Draper Lewis.

The question of injunctions. The strife over injunctions was little known to the public, and what the public did know about it tended to obscure the fact that this was not the only phase of governmental policy which should be functioning in labor disputes. However, members of Congress, state legislatures, and the political leaders of the country not only knew that the relation of government to labor disputes presented a serious problem, but also that the government sooner or later would have to play an important part. Anti-injunction bills were introduced in every session of Congress and of most state legislatures. As early as 1896 the Democrats had as their slogan "Government by injunction" to inveigh against the practice. After 1908 the Republican party also proposed the correction of abuses due to judicial intervention in labor conflicts. In 1914 some federal legislation was enacted. In 1928 both major political parties acknowledged the existence of abuses and committed themselves to the need for further legislation. But it was not until the enactment of the Norris-LaGuardia Act of 1932 that injunctions were actively and effectively controlled by the federal government. The states had almost a parallel history with that of the nation. An anti-injunction law was passed in Pennsylvania in 1937.³⁹ Under the law persons who have an indirect interest in labor disputes, as well as those who have ceased work because of labor disputes, are considered employees. It is also provided that officers and members of unions are not liable for unlawful acts of agents unless they actually participated in such actions or ratified them. The Act further provides that an employer who has employed strikebreakers may not be granted an injunction. The state of Utah in 1937 passed legislation requiring that any person, before accepting employment during a strike, must register with the Industrial Commission.

39 No. 308, Gen. Laws, Penn. (1937).

Section 7 (a) of the National Industrial Recovery Act greatly increased the number and intensity of labor struggles. Public Resolution No. 40 gave the President power to create a board or boards:

authorized and directed to investigate issues, facts, practices or activities of employers or employees in any controversies arising under Section 7(a) of said Act which are burdening, obstructing, or threatening to burden or obstruct the free flow of interstate commerce . . . ⁴⁰

As a result of this provision, numerous labor boards were established, some within the code of industries and others independent, regional or national in scope. The situation became so complicated and confusing that the entire set-up was abolished and a new one created to function in conjunction with the Department of Labor.

The National Labor Relations Board. The new board, known as the National Labor Relations Board, was created by Executive Order 6763 on June 29, 1934. It was authorized to appoint such employees as it deemed necessary without regard to civil service, except that it could not appoint mediators, conciliators, and statistical experts when the services of such persons could be obtained through the Secretary of Labor.

Jurisdiction of the Board. The Board was given original jurisdiction: (a) to investigate issues, facts, practices and activities in any controversies involving paragraph 7 (a) or burdening interstate commerce; (b) to order and conduct elections and to initiate action in enforcing its orders as provided in Public Resolution 44 of the Seventy-third Congress; (c) to hold public hearings and findings of fact regarding complaints of discrimination against employees and other alleged violations of paragraph 7 (a) and of the individual codes; (d) upon the request of the parties to act as a board of voluntary arbitration or to select such a person or agency.⁴¹

⁴⁰ 48 U. S. Stat. at Large, Part I, p. 1183.

⁴¹ Executive Order 6763 (1934).

In addition, the Board was to act as a centralizing clearing house for all of the labor boards in existence or to be created. Another duty was to act as a board of review for the regional boards.

Relation of the Board to other executive boards. The Board's relationship to other executive agencies may be summarized:

- a. It could request the Secretary of Labor to exercise his power of conciliation and mediation.
- b. It could secure aid from employees and services of the Department of Labor.
- c. It could decline to take cognizance of a dispute where another method of settlement is provided but not yet used.
- d. It could secure jurisdiction of any case involving Section 7(a) or Public Resolution 44, regardless of action taken by other executive agencies.
- e. Once a finding of fact has been made or an order issued, the Board's action is not subject to review by any other executive board.⁴²

The new Board was decidedly an improvement over its predecessors, both as to organization and relationship to the Department of Labor, but it still contained the most glaring weakness—little or no power to enforce its decisions. Its most important duties were still those of acting as mediator and conciliator. Of course, it had detailed jurisdiction over a much greater number of disputes than did its forerunners, but its powers were essentially the same as theirs had been.

While the Board was not placed outright within the Department of Labor, it was so closely associated with the Secretary that to all intents and purposes it was a part of that department. This is a distinct departure from the earlier boards, as they were independent in fact as well as in theory. Two special labor boards subsequently were placed directly within the Department of Labor. They were (a) the National Steel Labor

⁴² *Ibid.*

Relations Board⁴³ and (b) the Textile Labor Relations Board.⁴⁴

As their titles indicate, they were set up to operate within their respective industries, subject, of course, to correlation and review of the National Labor Relations Board. When the codes were outlawed in the Schechter case, both Boards were taken into the Conciliation Division of the Department of Labor and their functions limited accordingly.

The purpose of the National Labor Relations Board. The present National Labor Relations Board was created as an independent agency by the Act of Congress of July 5, 1935.⁴⁵ The purpose of the Act was to guarantee the right of employees to full freedom in self-organization and in the designation of representatives of their own choosing for the purpose of collective bargaining. To accomplish this purpose, the Board was given the following powers:

- (a) To issue cease and desist orders to prevent any person from engaging in any of the following specified unfair labor practices when they affect interstate commerce—
 - 1. Interference by employers with employees' rights of self-organization and collective bargaining;
 - 2. Employer domination of a company union;
 - 3. Discharge of an employee, or discrimination against him, because of his union activity or because he has filed charges or has given testimony under the Act;
 - 4. Refusal by the employer to bargain collectively with the proper representatives of the employees.
- (b) To decide whether the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or any sub-division thereof.
- (c) To certify the names of employee representatives designated, or to ascertain the names by secret ballot.

⁴³ Executive Order 6751, June 28, 1934.

⁴⁴ Executive Order 6858, Sept. 26, 1934.

⁴⁵ See Chapter IV for the requirement and application of the National Labor Relations Act.

- (d) To order and conduct hearings, and if it finds a violation of the Act, to issue an order to cease and desist from such unfair labor practices.
- (e) To issue subpoenas, administer oaths, conduct investigations, and issue complaints.
- (f) To petition any circuit court of appeals for the enforcement of a cease and desist order.
- (g) To prescribe such rules and regulations as may be necessary to carry out the provisions of the Act.⁴⁶

The first, fourth, and sixth sections are the most important, as here, for the first time, unjust discrimination against and employer domination of organized employees is categorically forbidden under penalty of punishment by federal courts. The preceding boards had frowned upon such practices, but they lacked the power to do something positive about them. The other sections of the Act add nothing new, as they are incidental to securing information necessary for the execution of the more important portions of the Act.

Unlike the earlier Acts, little mention is made of conciliation or arbitration. It states four actions that will not be legal, but instead of suggesting conciliation, the present Act provides court action with fines and prison sentences. This is a complete departure from the preceding Acts, as an action is either right or wrong, with no half-way position possible. Conciliation and arbitration would be out of place in such a plan.

It is hardly fair to base a decision as to whether or not this agency should be within the Department of Labor upon historical precedent, because this is a radically new and different labor board. Nor can it be called a duplicating agency for it does not duplicate a single feature of the Labor Department. The function of the latter is to provide and promote conciliation in all labor disputes that may be remedied by this method, such as those involving wages, hours, and working conditions. As pointed out above, the National Labor Relations Board does

⁴⁶ *U. S. Government Manual* (1935), pp. 525-526.

not concern itself with conciliation but with determining whether or not the law has been violated. Section four of the Act forbids the Board to appoint people for statistical or conciliation work when such service may be obtained from the Department of Labor. (Incidentally, this is the only time the statute mentions the Department of Labor). The two agencies are different functionally but where they have need of common material, the Department of Labor provides for both.

President Roosevelt summarized the distinction and the relation between them unofficially in a statement made on July 5, 1935:

The National Labor Relations Board will be an independent quasi-judicial body. It should be clearly understood that it will not act as a mediator or conciliator in labor disputes. The function of mediation remains, under this Act, the duty of the Secretary of Labor and of the Conciliation Service of the Department of Labor. It is important that the judicial function and the mediation function should not be confused. Compromise, the essence of mediation, has no place in the interpretation and enforcement of the law . . . ⁴⁷

Advantages of placing the Board within the Dept. of Labor. Despite the complete difference in the functions of the two agencies, there is much to be said for putting the Labor Board within the Department of Labor. While the bill still was in committee, the House of Representatives wanted the Board in the Department of Labor and the Senate wanted the Board as an independent agency. Both recognized the necessity of establishing a board with independence and dignity in order to attract men of high caliber and to give it national prestige, but they differed as to the best method of attaining this goal. The House of Representatives advanced the following reasons for putting the Board within the Department of Labor, still permitting it to appoint its own personnel, have its own budget, and make its own report:

⁴⁷ *Labor Law Service*, Washington, D. C. (1936), p. 2851. President Roosevelt in a statement of July 5, 1935.

1. It would integrate the problems of collective bargaining with other labor problems. This would produce the greatest possible understanding between the two in the field of industrial relations; reduce the pressure upon the Labor Board to engage in conciliation; guard against the confusion produced in the public mind by an increase in governmental agencies; and bring the Board more closely within the sphere of the problems of Government which ordinarily come to the attention of the President and his Cabinet.
2. It would make the Board more judicial in character than if it were an independent agency. If it were independent, there would always be the temptation to strengthen its prestige through educational and administrative activities. Secretary of Labor Perkins wished to relieve the Board of all administrative duties by giving the Secretary the responsibilities of budget, personnel, and report making. Such action would relieve the Board of all duties except those judicial in character.⁴⁸

The Senate Committee and the Minority House Report admitted that there was merit in the above proposals, but they also saw danger in them. In the first place, independence and impartiality are indispensable in any quasi-judicial board. Even though the House of Representatives wanted only a nominal connection between the Board and the Department of Labor, the Senate favored an agency established upon an independent basis. If the Board were subject to the control of the Secretary of Labor as to personnel and budget, impartiality would disappear in the inevitable tendency to conform the administrative policies of the Board to the policies of the particular administration. Such a Board must have a steadfast policy and not vary with each new administration.⁴⁹

A second danger is that the multiplication of the functions of Cabinet officers has already proceeded to such a point that the practical supervision of any new agencies, if entrusted to

⁴⁸ *Report No. 969*, U. S. House of Representatives, 74th Congress, first session (1936), pp. 9 and 10.

⁴⁹ *Ibid.*, p. 11.

the departments, would necessarily be exercised by overworked subordinates who often are not intimately acquainted with the acute problems.⁵⁰

A third danger is the difficulty in maintaining the proper division between quasi-judicial functions and executive functions when both are found within the same department. For example, one reason why the N. I. R. A. failed to function was due to the fact that the agency enforcing the quasi-judicial functions also was making codes which required constant cultivation of friendly feelings. The N. I. R. A. was forced repeatedly to compromise and bargain away specific rights in order to get a code created. The National Labor Board experienced the same difficulty and failed to solve it, with the result that a new board was created.⁵¹

A fourth possible source of trouble, if the Labor Board were in the Department of Labor, is that cases can be side-tracked and delayed by the Conciliation Division until too late for the Labor Board to act. Unless the Labor Board controls its cases from the moment of inception, it is subject to the difficulty of intervention and delay. In fact, even with the present arrangement many plaintiffs file their complaints with the wrong agency.

About the only safe conclusion to be drawn is that there is little or no duplication of effort between the two agencies. Like the U. S. Board of Tax Appeals, the Labor Board's functions are primarily quasi-judicial, and should be divorced from politics. This can best be attained through an independent status as Congress decided when it created the Board. The Brownlow Commission warned of the creation of too many such agencies responsible to no one, but gradually acquiring more and more authority. Dr. Herring had the same thing in mind when he wrote:⁵² The existing independent commissions are

⁵⁰ *Idem*.

⁵¹ *Ibid.*, p. 25.

⁵² Herring, E. Pendleton, *Public Administration and the Public Interest* (1936), p. 56.

forms well adapted to impartiality and expertness, but they lack coordination with the rest of the federal hierarchy.

However, President Roosevelt has managed to put his ideas into practice by changing the personnel administering the independent agencies. This injects politics again, but a certain amount of politics is necessary in order to keep those interpreting the laws awake to the public interest. If another President is not forceful enough to act in a similar manner, then placing the Board within the Department of Labor would not help.

Teachers of public administration and the Brownlow Commission contend that these boards should be placed in a department so there would be but the one executive budget instead of each board wrangling for its own funds. The point may be well taken, but here again the quasi-judicial function of the Board outweighs any possible gain in administration.

Permanent boards over a particular industry new to American industry. The older idea of arbitration was used as a technique of settling a particular strike by a particular board, and no other. The idea of having a permanent board of adjudication over a particular industry, or group of industries, is a new idea in American industrial relations. The arbitration of disputes arising out of business contracts, known as commercial arbitration, is only lately gaining the "respect" of our law courts. However, many states now have both laws and decisions making commercial arbitration agreements enforceable at law, until today arbitration extends quite generally throughout industry and is provided for in thousands of commercial contracts as security against litigation and the risk of unsettled controversies. A commercial contract is a part of a commercial language spoken and known by business, and is today probably the best medium for the control of economic good will.⁵³

⁵³ The first Act passed by the Federal government providing for voluntary arbitration and compulsory investigation was in 1888, 25 *U. S. Stat. at Large* 501 (1888).

Commercial arbitration based on contract. Commercial arbitration is based on contract; it is applied to controversies arising out of contracts that courts will now interpret and enforce. Also, in cases of commercial arbitration contracts, there are comprehensive arbitration laws which govern the proceedings and give the disputed parties recourse to the courts for aid. Too, in the case of commercial contracts the parties receive certain legal benefits, such as the enforcement of their arbitral agreements, appeal to the courts on questions of law, stay of an action at law, and the enforcement of the award as a judgment of the court. This eliminates the prolonged process of litigation.

Mediation is understood usually to mean the bringing together of employer and employees for a settlement of their differences by discussion and negotiation.⁵⁴ The mediator may be either a private or an official individual or a board. The duty is to make inquiries without compulsory powers to induce the disputing parties to effect a settlement through mutual concessions. Sometimes mediators, through their experience and familiarity with methods used for dealing with various difficulties in different trades, are able to suggest a solution. This tends to make experience and wide knowledge of industrial disputes invaluable. In all cases, the mediator is a "confidential" adviser. He never exercises compulsory power, even though he is a state authority. Should he attempt to bring public opinion to bear upon the disputants, he disqualifies himself for further mediation.

The difference between mediation and arbitration. Arbitration of a voluntary nature occurs when the disputants are unable to settle the controversy by themselves or with the assistance

⁵⁴ A majority of the states of the U. S. have agencies of some kind for the mediation and voluntary arbitration of labor disputes: Ala., Ariz., Ark., Colo., Conn., Ga., Ill., Ind., Iowa, Kans., La., Me., Md., Mass., Mich., Minn., Mo., Mont., Nev., N. H., N. J., N. Y., Ohio, Okla., Ore., Pa., S. Car., Tex., Utah, Vt., Wash., W. Va., Wis., Wyo., and Alaska, the P. I. and Puerto Rico. See Bulletins 370, 403, 470, 528 and 590, 654, 1937 *Labor Laws of the U. S.*, Series published by the U. S. Bureau of Labor Statistics.

of a mediator. They then agree to submit the points at issue to an arbitrator, by whose decision they promise to abide. Arbitration consists of a number of steps and becomes more technical than mediation: (a) the submission of the dispute to the decision of a third party; (b) submission to an investigation; (c) refraining from strikes or lockouts pending the investigation, i.e. maintaining the status quo; (d) drawing up an award; (e) enforcing the award and refraining from strikes or lockouts during the life of the award. The essential difference between mediation and arbitration is that in arbitration both parties consent in advance to calling in the powers of government. Hence the state may use its power to compel testimony or enforce an award and still be consistent with the idea of voluntary arbitration.⁵⁵

Under compulsory investigation, a board is created by the state. It summons witnesses and takes testimony, upon its own initiative, the initiative of either of the disputants, or in spite of the opposition of either or both disputants. The board is one of investigation and recommendation, without legal power to enforce its awards. Compulsory investigation is often accompanied by prohibition of strikes or lockouts pending the investigation and the publication of the recommendations. In the case of compulsory postponement, it is similar to the Canadian Industrial Disputes Investigation Act.⁵⁶

In compulsory arbitration the government directly or indirectly would compel employers and employees to submit their grievances to an "outside" agency for decision, and would exercise dictatorial supervision of all five of the steps mentioned above. The element of *Must* would be applied along the complete process, and penalties provided for violation by fines and imprisonment.

The states and arbitration laws. The states have been slow and hesitant even in passing voluntary arbitration laws; not

⁵⁵ See Chapter V for a fuller discussion of arbitration of labor disputes.

⁵⁶ Canadian Industrial Disputes Investigation Act (1907), Edward VII, C. 20. See Chapter IV of this work.

half of them have yet enacted such laws.⁵⁷ The statutes that have been passed for the most part constitute a very efficient method of settling economic difficulties. They act almost at once and under a very simple and reasonable process. When a controversy does arise, either party may demand arbitration under the statute; if the other party accepts, the parties proceed under the rule of procedure they have provided. If and when the arbitration faces defeat, then, upon application of one of the parties, the court, acting under the statute that the disputing parties agreed upon, may issue an order directing the arbitration to proceed. Should the parties fail to appoint an arbitrator, the court may do so; it may also stay an action at law until the arbitration has been held. If one of the parties should fail to appear for the purpose of presenting his side of the case, the court may proceed in his absence.⁵⁸

57 N. Y. in 1937 created a state board of mediation and appropriated \$25,000 to carry on its work of preventing and composing labor disputes. Wisconsin has enacted a labor disputes act which defines "unfair labor practices," outlaws company unions, sets up a state labor board empowered to prevent unfair labor practices and to appoint arbitrators in industrial disputes. The three-man board will have \$50,000 a year to carry on its work. The law provides for a fine of not more than \$500 or imprisonment for not more than a year for violations.

58 The American Arbitration Association has established and maintains a national system of Commercial Arbitration Tribunals for the voluntary arbitration of civil and commercial controversies. This system covers 1,600 cities in the United States and has available for service as arbitrators 7,000 members of a National Panel of Arbitrators. These Tribunals acquire their jurisdiction from the parties, who fix their powers by mutual agreement. These agreements are of two kinds: written submissions, which refer an existing dispute, and arbitration clauses in contracts, which refer future disputes, whenever they arise under the contract.

Facilities are furnished to any persons, corporations or groups that agree to submit a controversy to arbitration under the Rules of the Association and under the arbitration law prevailing in the state where the arbitration is to be held. These Tribunals represent the voluntary efforts of commercial and economic organizations and institutions to settle their own controversies by judges of their own choice who are expert in the field in which the controversy arises. They are supported by the fees paid by the parties and by annual affiliation fees of those interested in commercial arbitration and in the maintenance of good will and commercial peace. These tribunals are

One of the points to be pressed in organized arbitrations is the control over harmony and good will throughout the industry. This is largely due to two facts: that the machinery is provided in advance, and, particularly, to the fact that the industry is being educated in its use.

Technical procedure for arbitration. There are, however, certain circumstances which make it more difficult, but not impossible, for industry and labor to arbitrate their differences. In the first place, to establish and maintain machinery of quasi-judicial procedure is technical and an undertaking for experts. This being expensive, many trade associations find it difficult and laborious to maintain such a set-up. Also in the case of industrial labor controversies the question of social and economic prejudices come to the fore, making the question of an impartial tribunal all but impossible.⁵⁹

Commercial and industrial arbitration. In 1937 the American Arbitration Association announced the establishment of a voluntary Industrial Arbitration Tribunal. Through the influence of this association, uniform rules and practices have been spread throughout various branches of industry and mutual goodwill is slowly becoming a conscious goal. The problem of incorporating the value of commercial arbitration into industrial-labor disputes growing out of our new industrial society is one of

competent to hear any civil or commercial controversy arising out of American civil or commercial contracts and foreign trade contracts, except those specifically excluded by law and except controversies arising out of inter-American trade which are adjudicated under a separate system. See *Inter-American Arbitration Tribunals*, organization and rules, obtainable from the American Arbitration Association, 8 West 40th St., New York City.

59 In 1913 at a hearing on the Newland Bill, W. S. Carter, President of the brotherhood of Locomotive Engineers, Enginemen and Firemen, stated, after fifteen years of experience under arbitration, "I have reached the conclusion that a labor question is not arbitratable if the workingmen hope to secure justice in the results. I have discovered that anything that pertains to workingmen's wages or working conditions is purely a class question, a question on which there is an alignment hard and fast." U. S. Senate, 64th Congress, 1st session, Senate Doc. 549, *Threatened Strikes of R. R. Employees*, p. 143.

the adjustments now being attempted by the federal government at Washington. The old idea that business should be able to run its own affairs, especially when the business is so interwoven with the economic and social welfare of the nation, is now being more seriously considered than at any time in our history. Where is the line of self-regulation and government control to be drawn? We are now in the process of obtaining an answer to that question under the National Labor Relations Act. The National Labor Relations Act is an exercise of Congress to protect interstate commerce from injuries caused by industrial strife.

As has already been pointed out in the preceding pages, before this statute was enacted experience had shown that industrial strife was a recurrent burden upon the interstate commerce of the nation. Not only in its totality had such strife produced obstruction to commerce, but also in many individual cases, such as strikes, it eventuated in conspiracies to restrain commerce or impose such substantial burdens upon it that penalties or injunctions were applied under the Sherman Act.

Congress, in dealing with this evil of industrial strife, might have approached the problem in either of two ways: it might have enacted a statute designed to remove the burden on interstate commerce after it had evidenced itself in a particular case, as the Sherman Act did; or it might have enacted a statute to deal with the causes of the burden in anticipation of their probable effect. Congressional power to enact this second type of statute extends at least as far as the power to enact a statute to control the burden after it appears.⁶⁰

The National Labor Relations Act, which is an exercise of this preventive power, does not attempt to eliminate causes of strife in all enterprises. The statute and the mandate addressed to the Board are specifically directed to the elimination of the prescribed practices only when they are found to be "affecting commerce." (Sec. 10(a))

⁶⁰ *Stafford v. Wallace*, 258 U. S. 495 (1921).

Several questions have arisen under the administration of the Act. Should the Act be amended so that it will apply equally to both industry and employee? Should the courts be given permission to review the facts of a case as well as the legal conclusions of the Board? Should the employer be permitted by petition to have an election called the same as the employee? Should the employer be protected in his refusal to deal with unions for a reasonable length of time if the union has not kept within the bounds of the law? That some of these questions will be answered by an Act of Congress in the affirmative seems relatively sure.

The question of arbitration in industrial disputes is not as recent as many people might believe. In 1913 the Newland Act strengthened the then existing mediation and arbitration machinery by substituting the independent Board of Mediation and Conciliation for the two ex-officio mediators of the Erdman Act by giving the Board the right to offer mediation on its own initiative and by authorizing six-men as well as three-men arbitration boards.

The value of past and present codes. Another intervention made by the federal government is the formation of codes. These have been of considerable value, not only by winning for labor a minimum standard of living, but also by creating precedents and by way of education. The National Industrial Recovery Act was not only a recovery measure but also a reform measure. A provision for minimum wages and maximum hours was designed to encourage the spreading of work among the unemployed. Whereas the N. R. A. has passed off the industrial stage, nevertheless its codes as instruments of labor legislation have registered a number of permanent social gains. They have brought about the acceptance of the principle of the minimum wage, the limitation of hours of labor, the control of child labor and the regulation of general working conditions on a nationwide basis.

The code procedure. Another outstanding contribution made by the codes was the establishment of the research agencies.

The agencies operated as fact-finding bodies on which recommendations were based for the consideration of the administration. These agencies are still with us and make a great contribution to operating boards.

The code procedure can be seen operating in the case of the General Cigar Company and Cigar Makers International Union of America.⁶¹ In this case there was a strike involving approximately 650 employees of the General Cigar Company, Nanticoke, Pennsylvania. The strike occurred in December, 1933, following the discharge of one Ambrose Tastowski, an official of Local No. 199 of the Cigar Makers International Union, and a disagreement regarding working conditions.

The Board's attempt to mediate the dispute was not completely successful; agreement was reached on all the differences between the parties, except the reinstatement of Tastowski. The company agreed to enter into a contract with the union, containing among other things a provision for the collection of union dues on company property. The employer, however, refused after extended negotiations to reinstate Tastowski and declined to reopen its plant until the validity of his discharge had been finally determined. A hearing was accordingly held by a representative of the National Labor Board to determine the causes of the dismissal.

Under 7 (a) of the National Industrial Recovery Act, an employee may not be required to refrain from joining, organizing or assisting a labor organization of his own choice. The statute thus forbids the discharge of an employee for union activities.

No persuasive evidence was offered establishing the claim of discriminating discharge.

The National Labor Board consequently ruled that:

1. The General Cigar Company may deny the petition of Ambrose Tastowski for reinstatement.
2. The strike shall be called off immediately, the plant shall be reopened, and the workers shall return to work without prejudice or discrimination.

61 Decisions of the National Labor Board, No. 163 (1934).

3. An agreement shall be made within ten days between the General Cigar Company and the Cigar Makers International Union of America, Local No. 199, covering the eleven points embodied in the letter of the Grievance Committee, dated Dec. 11, 1933, to the General Cigar Company.⁶²

The importance of the federal government's sponsorship of industrial boards. More important than codes is the federal government's sponsorship of industrial boards. These boards are generally of two kinds, those created independently of the codes and those created under the codes. Technically this distinction is not true, since some of the boards functioning under the codes, such as the bituminous coal and petroleum labor boards, are relatively speaking independent. The only industrial boards with statutory authority are the textile, longshoremen, and steel industry boards. They were created by Executive Orders under authority of Public Resolution 44.

The textile, petroleum and steel boards consist each of three public representatives, appointed by the President. All other industrial boards are tri-partite, or bi-partisan, their members being drawn from the employers' associations and the unions in the industry. This plan more nearly represents all interested parties.

As an effective means of settling and preventing labor strikes, the federal government has probably done more with its special boards than with any of its other agencies. This is explained more clearly in Chapter V on the Railway Labor Act and the National Mediation Board.

The Wage and Hour Bill. The last outstanding piece of federal legislation that has been enacted is the Fair Labor Standards Act (1938).⁶³ This legislation marks a stage in the

62 On the jurisdiction of the National Labor Board in cases of this character, see *In the matter of Tubize Chatillon Corp. and Rayon Workers Union*, Case No. 524 (1934); *In the matter of Jersey City and Syndhurst Bus Co. and Brotherhood of R. R. Trainmen*, Case No. 235 (1934).

63 The Fair Labor Standards Act of 1938, 75th Congress, Public No. 718.

long line of attempts to equalize the power of employer and employee. In a sense it is in contrast with conciliation and arbitration, which takes place only after a demand has been made by one party and refused by the other. Minimum wage laws, on the other hand, seek to regulate the wage rate before any dispute over the terms of wages has arisen. Since in modern industrial communities there are still large numbers of unorganized workers, still bargaining individually, employed at low wages and apparently unable to make any effective efforts themselves to improve their conditions, this legislation should go a long way toward helping these workers to equality in bargaining power. Section 6 of the Act sets a standard below which wages may not be depressed. Section 7 does the same thing for hours by setting a maximum hour week.

Need for state legislation. The Fair Labor Standards Act, like the National Labor Relations Act, has to do with "commerce between the states." This, of course, leaves much labor still uncovered by legislation. For such labor, the states must take the initiative. Fortunately some states had wage and hours legislation before the federal Act.⁶⁴

This legislation is perhaps the most important since the invalidation by the United States Supreme Court of the National Industrial Recovery Act in 1935. Under the N. I. R. A., collective bargaining, minimum wages, maximum hours, and the abolition of child labor had been provided for in the codes of fair competition. Later, the right of collective bargaining was established, as we have seen, by statute in the National Labor Relations Act.

Under this Act of fair competition, Section 6, every employer subject to the Act must pay to the employees engaged in

⁶⁴ Ariz., Ark., Colo., Conn., District of Columbia, Mass., Minn., N. Y., Nev., Okla. and Penn.—all had minimum wage laws by 1938. The Oklahoma law was made applicable to men as well as women, and thereby becomes the first state to have such a law. President Roosevelt appointed Elmer Andrews to act as the first administrator of wages and houses. His office is in the Department of Labor.

interstate commerce, or in the production of goods for interstate commerce, wages at the following rates: (a) during the first year not less than 25 cents an hour; (b) during the next six years not less than 30 cents an hour; and (c) after the expiration of seven years, not less than 40 cents an hour.

Under Section 7, the maximum hours permitted by law are fixed at 44 per week for the first year; 42 for the second year; and 40 thereafter.

Section 12 of the Act makes it unlawful for any producer, manufacturer, or dealer to ship or deliver for shipment in commerce any goods where oppressive child labor has been employed. The law defines "oppressive child labor" as meaning a condition of employment under which: (a) any employee under 16 is employed in any occupation (except by a parent not engaged in manufacturing or mining); or (b) any employee between the ages of 16 and 18 is employed in occupations declared by the Chief of the Children's Bureau of the Department of Labor to be detrimental to the health of children.

Section 15 (a) of the Act makes it unlawful to transport, ship, or sell in interstate commerce "any goods in the production of which any employee was employed in violation" of the wage and hour provisions of the Act. Thus, it is argued that the term "any employee" is so broad that it includes employees of the vendor, despite the absence of knowledge on the part of the vendee, that goods were "tainted." Such an argument seems strained. The term "any employee" will probably be interpreted to mean any employee of the person who is about to ship the goods, from whatever source purchased. It apparently will not be necessary for the employer himself to ship goods over state lines. If goods is purchased by an out-of-state purchaser and taken by the buyer out of state, or if the producer sells to a wholesaler who in turn sells them in interstate commerce, the employees of the original manufacturer are engaged in the production of goods for interstate commerce.⁶⁵

⁶⁵ Administrators Interpretative Rule, Dec. 2, 1938.

CHAPTER IV

LEGAL METHODS AND TECHNIQUES AFFECTING LABOR DISPUTES

The National Labor Relations Act. In a series of five decisions on April 12, 1937 the United States Supreme Court established the constitutionality of the National Labor Relations Act passed in 1935. The Court affirmed that Congress, under its power to regulate commerce among the states, has authority to protect the collective bargaining rights of workers whose businesses are substantially interstate in character.

The National Labor Relations Act declared it to be the policy of the United States to prevent and mitigate labor disputes "by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing." For many years before this statute was enacted there had been a recognition of the evils of constant industrial strife and the magnitude of its effect on the commerce of the nation. During certain periods of readjustment the evil became more pronounced, the controversies more numerous and more apt to spread, through sympathetic action, to other enterprises in the industry or to other industries.

Strikes as a burden to interstate commerce. Not only did the total burden of a multitude of strikes bear heavily upon interstate commerce, but also in many cases industrial strife eventuated in conspiracies to affect commerce, or strikes which otherwise so substantially burdened it that in order to protect commerce, punitive sanctions authorized by the Sherman Anti-trust Act were applied.

Government intervention at time of strike. The problem of maintaining interstate commerce unobstructed for many years required federal action by both the legislative and executive branches of the government, in efforts to bring about industrial

peace. Frequently, this intervention has taken the drastic form of sending troops to the place of dispute, as in the Pullman Strike of 1894 and the Steel Strike of 1919-1920. At other times commissions of inquiry have been appointed by Congress, the President, or a cabinet officer to investigate or attempt an adjustment of the dispute.¹

Effort on the part of the government to prevent strikes. Nor has federal intervention in the past failed to consider or invoke means for the prevention of the burden on commerce resulting from industrial strife through the elimination of basic causes. As early as 1882 the United States Senate adopted a resolution directing its Committee on Education and Labor to undertake a study of labor disputes, to "inquire into the causes thereof and the agencies producing the same, and to report what legislation should be adopted to modify or remove such causes and to provide against their continuance or recurrence."² Extensive inquiries for the purpose of working out a comprehensive scheme for dealing with industrial disputes were later undertaken by four subsequent commissions—The Industrial Commission of 1901, the Anthracite Coal Commission of 1902, the United States Commission on Industrial Relations of 1912, and the President's Industrial Conference of 1919-1920.

The government intervention in the R. R. industry. In several fields the federal government has dealt with industrial strife on a comprehensive long-range basis. In the railroad industry, after an experience in legislation dating back to 1888, Congress in the Railway Labor Act of 1926 and in the Act as amended

1 E. g., the Commission appointed by the President to investigate the Pullman Strike of 1894, U. S. Strike Commission, *Report of the Chicago Strike of June-July (1894)*, (R. 416); the investigation by a Senate Committee of the Steel Strike of 1919 (Sen. Rep. No. 289, 66th Cong., 1st Sess.); the President's Board of Inquiry for the Cotton Textile Industry, appointed to investigate and adjust the general textile industry strike of 1934 (R. 934-944); and the Commission appointed by the Secretary of Labor to adjust the strike in the Goodyear Rubber Plant in 1934 (R. 714-734).

2 *Cong. Record*, 47th Congress, Vol. XIV, p. 1485 (1882).

in 1934, applied the principles which it subsequently incorporated in the National Labor Relations Act. In the two years immediately preceding passage of the National Labor Relations Act a rising tide of labor disputes, not unusual in periods of recovery from depression, led to the establishment under the N.I.R.A. of the National Labor Board, and in 1935 under the N. L. R. Act and its successor, the first National Labor Relations Board.

The National Labor Relations Act cannot properly be considered apart from this background of industrial disputes and of previous attempts by the federal government to meet this problem.

Jurisdiction of the N. L. R. B. The National Labor Relations Board gets jurisdiction over a case when a charge is made by a union representative or an employee, that an employer has engaged in or is engaging in unfair practice. As the Act now stands, this is a privilege solely of the employee. Then the Board or any of its agents is authorized to serve a complaint against such a person, and a hearing is held and a finding of fact made as to whether the defendant has been guilty of any of the five unfair labor practices listed in the Labor Relations Act. Jurisdiction is limited to the investigation of questions affecting commerce, interstate and foreign. The practices that are declared unfair are for employers and are:

1. To interfere with, restrain or coerce employees in the exercise of their right guaranteed by the law to organize and to bargain collectively through representatives of their choosing.
2. To dominate or to interfere with any labor organization or to contribute financially or otherwise to its support.
3. By discrimination in hiring or employment to encourage or discourage membership in any labor organization.
4. To discharge or otherwise discriminate against any employee who files charge or gives testimony under the Act.
5. To refuse to bargain collectively with representatives of employees as provided in the Act.

No penalties are provided for non-compliance with the Board's order, or for refusal to testify or to produce records or to answer subpoenas. The Board is, however, authorized to petition federal circuit courts of appeal for decrees to enforce its orders, and these courts may then punish for contempt.

Legislation designed to reduce the burden on interstate commerce. Obviously these are judicial procedures, and the National Labor Relations Board is apparently designed as a substitute for the United States District Courts to enforce the labor relations policies and labor rights established by Congress, from which appeals go to the circuit courts.

Federal legislation designed to eliminate or reduce burdens or obstructions to interstate commerce has taken either of two forms. First, Congress may enact a statute designed to mitigate the burdens by dealing directly with each particular obstruction as it arises. The Sherman Anti-trust Act (1890) illustrates this type of legislation. Second, Congress may enact a statute dealing with the causes of this burden in anticipation of their probable effect. A statute of the first type might be known as an exercise by Congress of its "control" power, whereas the second type might be known as an exercise by Congress of its "preventive" power. Both types of legislation are merely different means by which Congress may approach the problem of burdens on interstate commerce.

Packers and Stockyards Act. The power of Congress to enact preventive legislation is illustrated by the Packers and Stockyards Act. Many practices prevalent in the stockyards and the meat-packing industry in general had seriously burdened interstate commerce in both livestock and meat products. Some of these practices were effectively punished under the Sherman Act. Congress then passed the Packers and Stockyards Act of 1921, designed to eliminate the cause of the burdens to interstate commerce. The United States Supreme Court upheld the Act in the case of *Stafford v. Wallace*.³

³ *Stafford v. Wallace*, 258 U. S. 495 (1921).

Grain Futures and Clayton Acts. Many other examples of the exercise by Congress of the power to "prevent" evils which it could control could be cited. For our purpose it will be sufficient to refer to the Grain Futures Act (Act of Sept. 21, 1922); the Railway Labor Act of May 20, 1926; and the Clayton Act of 1914.

The National Labor Relations Act is also an example of preventive legislation, based on the admitted power of Congress to control certain types of industrial disputes when they have occurred. The Act does not deal with injuries to interstate commerce after they have occurred, but seeks to prevent their occurrence by the elimination of certain specified practices which Congress has found led to such disputes.

The Act does not attempt to eliminate the causes of strikes in all enterprises. The statute and the mandate are specifically directed to the elimination of the practices which have led or are tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

Previous experience with preventive legislation. In examining the nature of the evil to be anticipated before it requires the elimination of the practices, the Board thus operates in a manner similar to that followed by Congress in other preventive legislation. Just as Congress found in the stockyards and the packing industry certain evils which burdened interstate commerce and undertook to prevent them by the Packers and Stockyards Act; and found similar evils on the grain exchanges and undertook to prevent them by the Grain Futures Act; so here the Board determines the existence of the probability of the occurrence of a labor evil which Congress could control. The Labor Relations Act is an effort to eliminate the causes of labor evils and makes no attempt to construct a plan or pattern for the general conduct of business.

An effort to eliminate the cause of labor evils. Congress had before it then, when it was considering the National Labor Relations Act, an extensive background upon which to base its legislation, all of which had been brought before its com-

mittees during hearings extending over a period of years. Section I of the Act states:

The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce. . . . Experience has proved that protection by law of the rights of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest.

Viewed in the light of the facts that Congress had before it, it is not unreasonable to believe that now, the Act having been upheld by the United States Supreme Court, it will go a long way toward eliminating the hazard in employer-employee relationships by giving them a rule of law and an industrial system of order.

Present problems and the N. L. R. B. It is true, at the present time, that we are in the midst of industrial warfare, and the question is being asked, why does the National Relations Board not intervene in these strikes? The answer may be found in part in the fact that the Act was adopted in 1935, but was not passed upon by the United States Supreme Court until May, 1937. In the meantime most industrialists had proceeded upon the assumption that the high court would invalidate the Act.

Another and more technical reason may be found in the Act itself. When the President signed the Act, he then said:

The National Labor Relations Board will be an independent quasi-judicial body. It should be clearly understood that it will not act as mediator or conciliator in labor disputes. The function of mediation remains under this Act the duty of the Secretary of Labor and of the Conciliation Service of the Department of Labor. It is important that the judicial function and mediation function should not be confused. Compromise, the essence of mediation, has no place in the interpretation and enforcement of the law.

Thus it is seen that the National Labor Relations Board is given no direct authority to mediate or conciliate any labor dispute. At times mediatory and conciliatory functions may be found to be necessarily implied in the duties of the Board, insofar as it may arrange settlements by agreement of the parties to dispose of cases brought before the Board, but such settlements, as the President pointed out, could not compromise law enforcement.

Jurisdiction limited to disputes affecting interstate commerce. The Board is given no blanket authority over all employers and employees in all industries, even in the restricted field of labor relations in which the Act operates. Jurisdiction is limited to the investigation of questions "affecting commerce" concerning the representation of employees, and to the prevention of unfair labor practices in commerce, and that commerce must be "interstate and foreign."

As has been stated, the duties of the N.L.R.B. as defined in the Act are to enforce a policy of collective bargaining between employers and representatives of labor's own choosing; to conduct elections, when necessary, to determine the majority's choice of a bargaining agency; to investigate complaints from workers about employer interference with union organization, and if the complaints are found justified, to order the employer to make amends. The N.L.R.B. is not an agency for mediation of strikes and lockouts; rather, it operates on the theory that if workers are freely permitted to organize, labor troubles affecting interstate commerce will be minimized.

N. L. R. B. encounters trouble from the beginning. From the very beginning the N.L.R.B. was hampered by lawsuits brought by companies which charged the Act was unconstitutional. Only when the Supreme Court validated the law did the Board begin to function. Even after the constitutionality of the Act had been determined, attacks were made on it by public speakers, industrialists, the United States Chamber of Commerce, the press, and United States Senators. Senator Burke

of Nebraska, speaking before the U. S. Chamber of Commerce in 1937, denounced the Wagner Act, charging that it "has been a patent force in vastly increasing labor disputes, that there is such a lack of confidence in the Board as now constituted that its members should resign." At the same session the Chamber declared that the N. L. R. B. had obstructed recovery and demanded that the Act be repealed or drastically amended to protect the rights of employers as well as employees. Even the A. F. of L. and the C. I. O. have been bitter in their criticism.

But whatever may be the criticism, justified or not, the statute has been upheld as within the powers of Congress by the United States Supreme Court.

The Mackay Radio case. That tribunal has yet to render a decision adverse to the determinations of the Board or hold invalid any single provision of the law. The court's decision in the Mackay radio case was the eleventh opinion upholding either some phase of the Act or the authority and decisions of the Board.

From the point of view of this study, the Supreme Court's decision in the Mackay Case is important, as well as significant to the future of the Act. On the merits of the controversy involved in the case, the Court ruled that workers who go out on a strike not provoked by any unfair labor practice of their employer, nevertheless remain employees; and that the employer, if he discriminates because of union activities in reinstating the strikers after failure of the strike thereby violates the Wagner Act.

The conflict in the Mackay Radio Case. The situation in the Mackay Radio Case was that the employees, because of what they considered the unsatisfactory state of negotiations with the employer over a wage contract, went on a strike called by their union. Other workers from another office of their employer replaced them. The strikers were unsuccessful and applied to return to work. They were told by the management

that all except eleven could return immediately, but that these eleven would have to make application for reemployment because some of those filling the jobs wished to stay. Later, six more were reinstated. The remaining five strikers refused reinstatement were active union leaders. The Labor Board found that in taking back six of the eleven men and by excluding five active union men, the employer discriminated against the latter because of their union activities, thereby violating the Wagner Act by engaging in unfair labor practices.

On these facts, the Supreme Court held that: (1) the strike was in connection with a current labor dispute—the contract negotiations; (2) the strikers, therefore, under the terms of the Wagner Act, remained employees entitled to the Act's protection against unfair labor practices; (3) discrimination on account of union activities in putting striking employees back to work is an unfair labor practice; (4) there was evidence supporting the Labor Board's finding of discrimination.

On the fourth point, the Supreme Court did not consider the evidence pro and con as to the fact of discrimination. This it may not do under the Labor Act, which provides that the Board's findings of fact, if supported by evidence, shall be conclusive. In addition to constituting a precedent in the law of labor relations, the decision illustrates the importance of fact-finding and illuminates the controversy over the question of a fair hearing before quasi-judicial agencies.

Remington Rand and the N. L. R. B. One of the bitterest labor disputes of recent years was carried to the Supreme Court by Remington Rand, Inc., which contested the validity of orders of the National Labor Relations Board. The company asked the Court to review a decree of the Second Circuit Court of Appeals compelling the company to comply, with minor modifications, with a cease and desist order issued by the Board.

The Board's order, outgrowth of strikes in Remington Rand plants in the spring of 1936, directed the company to offer reinstatement to employees who went on strike and allegedly

were barred from reinstatement. The company's petition said the number involved might run as high as 4,000.

The company charged that the Circuit Court should have nullified the Board's order because misconduct by union members during the strike had barred them from aid. "To say that a union guilty of misconduct may compel the employer to bargain with it," the company's petition said, "and to say that members of the union, who were guilty of crimes committed subsequent to the date of the strike, are entitled to reinstatement, is to encourage industrial strife rather than to eliminate the cause of it."

The company specifically challenged the Board's finding that the Remington Rand Joint Protective Board of the District Council of Office Equipment Workers, a unit of the Metal Trades Department of the American Federation of Labor, represented a majority of the workers at the six plants involved.

The Board directed the company to recognize the protective Board as bargaining agency and to bargain with it for workers at its plants at Tonawanda, Ilion and Syracuse, N. Y., Middletown, Conn., Marietta and Norwood, Ohio.

The Remington Rand petition asserted that the Board had gone far beyond its legal power in ordering the reinstatements and pointed out that in each instance where a former employee accepted reinstatement, a present employee would have to be discharged. Therefore, the petition concluded, as many as 4,000 current workers, employed by the company since March, 1936, would face loss of their jobs.

Remington Rand lost and the process of reinstatement of discharged employees began immediately. By July, 1938, all but some 200 who wanted to go back to their old jobs had been reinstated.

The advantage of the Board on court review. Orders of the Labor Board are not enforceable until approved by a circuit court of appeals. But on court review the Board has an advantage over the employer attacking its ruling which comes from the Wagner Act's provision, similar to provisions in other

statutes such as the Federal Trade Commission Act, which declares that findings of fact, if supported by evidence, shall be conclusive.

The Maytag Case. A very interesting case was climaxed in the Maytag Strike of May, 1938. The case briefly is as follows. Early in May the company announced a 10 per cent wage cut; this brought on a strike by the United Electrical, Radio and Machine Workers, a C. I. O. affiliate, to which most Maytag employees belonged. A bitter struggle ensued. On July 8 Governor Nelson G. Kraschel of Iowa invoked the state law for mediation of labor disputes. An arbitration board recommended that the employees return at their old wages pending negotiations between union and management. The union accepted the proposal; the management declined.

Local officials told Governor Kraschel that bad feeling was brewing, especially after a "back-to-work" movement was started and the Maytag plant reopened. On July 19 the Governor put the district under martial law; National Guardsmen closed the factory.

Conflict of Iowa with N. L. R. B. About the same time a trial examiner of the National Labor Relations Board began a public hearing in Newton, Iowa, on union charges that the Maytag firm was guilty of "unfair labor practices." The Governor ordered the National Guard to close the N.L.R.B. hearing, on the ground that it was a "disturbing factor" in the community and "might be delaying a settlement of the dispute."

The main N.L.R.B. office in Washington assailed as "illegal," in the light of past decisions of the Supreme Court, the Governor's attempt to subordinate "national to the State authorities in matters affecting national sovereignty" and "civil to the military authorities in times of peace." It ordered the hearing reopened at Des Moines, thirty-five miles from Newton.⁴

⁴ The dispute, had it reached the courts, would have involved a conflict between the police power of the state and the commerce power of the federal

New York State Labor Relations Act. Besides the N. L. R. B. which administers the Act for "interstate and foreign labor," many states have enacted similar laws to deal with strictly intrastate labor. New York State offers a good example. The New York State Labor Relations Board reported that it was instrumental in settling seventy-five strikes, involving 6,120 employees, in its first year of activity.

Success of the State Board. In 330 other industrial disputes, affecting some 43,000 workers, strikes were averted through the Board's intervention, according to their report.⁵ In administering the "little Wagner Act" in that state, the Board has taken up 1,760 cases, of which 886 have been closed and 874 are still pending. Employers, who are permitted to invoke the Board's aid directly, petitioned for elections to determine employee bargaining representatives in 47 cases. Employees asked election 896 times. Charges of unfair labor practices were filed with the Board in 817 instances. The election cases involved 87,950 workers and the unfair labor practice cases 57,400, the report said. Sixty independent unions were petitioners in 240 cases, individual workers filed 105 petitions and the employers 47, according to the report.

When we compare our National Labor Relations Act with the Canadian Industrial Disputes Act as a means of settling labor difficulties, the weakness in our own Act becomes a little clearer.

THE CANADIAN INDUSTRIAL DISPUTES ACT AS A MEANS OF ESTABLISHING A LABOR POLICY BETWEEN THE EMPLOYER AND THE EMPLOYEE

Change in American labor's attitude. When fifty years ago James Bryce wrote his famed treatise on American institutions, he observed that in contrast with European countries government. Past decisions of the Supreme Court indicate strongly that in such litigation the outcome would be favorable to the Labor Board. This clash may be the precursor of other similar instances of conflict between a growingly centralized national government and the sovereign states.

⁵ Report issued by N. Y. State Labor Relations Board, July, 1938.

there was almost an entire absence in the United States of clashes between employer and employee; and that the few exceptional strikes which did occur were due to immigrants who brought with them the old-world class hatreds.⁶ The passing years, however, have brought industrial warfare to the United States; and, in contrast to Bryce's thesis, this has been due not to inherited class hatreds of foreigners but to their adoption of American standards of living and assimilation of American concepts of freedom and equality. It was natural, therefore, that in an effort to find methods for an amicable settlement of such industrial disputes Americans should study the experience of those countries which had strikes and lockouts long before they became widespread in the United States. And, while it is true that New Zealand and Australia pioneered in legislation for the settlement of employer-employee disputes, we turned our attention to such efforts in a nearer British Dominion, our neighbor Canada, which was fairly successful in finding peaceful means for settling such disputes, or rather postponing and averting them. Known as the Industrial Disputes Investigation Act, Canada enacted this law in 1907 and has frequently amended it since that time. This is a study of the origin, development, and operation of that law. But if our interest in a review of the Industrial Disputes Investigation Act is to be more than a mere academic observation, it is essential to bear in mind the differences between national psychology, political traditions, and the status of organized labor in Canada and in the United States. These factors are far from identical; so our problem is not how to adopt the Canadian legislation but how to adapt it to our own peculiar conditions.

Like the United States National Labor Relations Act, the Canadian Industrial Disputes Investigation Act was the culmination of numerous investigations by governmental commissions, the first of which made its report nearly fifty years ago.⁷

⁶ Bryce, James M., *American Commonwealth*, Vol. II (1890).

⁷ The Royal Commission, appointed in 1886, made its report in 1889.

After fourteen years of study, the Conciliation Act of 1900 was passed and the present Canadian Department of Labor was established. Provision was made for the collection of labor statistics and the Minister of Labor was empowered to act as conciliator in labor disputes. While this Act did not outlaw strikes and lockouts, it did embody most of the salient provisions of the present Industrial Disputes Investigation Act in that the dispute could be referred to an arbitration board and the findings of the board were published. All Canadian legislation was predicated on the hope that the public would lend the weight of its opinion in favor of the board's findings and thus aid in the settlement of industrial disputes.

The Industrial Disputes Act. Between the passage of the Conciliation Act and the present amended Industrial Disputes Investigation Act, there was much agitation for compulsory arbitration in labor disputes.⁸ But, while many bills were drafted, none were enacted into law. The Industrial Disputes Investigation Act is often cited as "Canada's method of arbitrating disputes," but that is an erroneous conclusion. The Act does not force employer and employee to arbitrate. Unlike the system in operation in New Zealand since 1894 which provided for compulsory arbitration, the Canadian Act really does not effect any arbitration at all; it merely provides for mediation. The boards made "recommendations," not awards.⁹ The Act provides that "wherever any dispute exists between

⁸ The Railway Labor Disputes Act, enacted in 1903, empowered the Minister of Labor to appoint committees of investigation and conciliation; and, in the event no settlement was effected, the dispute might be referred to an arbitration board. However, the arbitrators could not compel the disputants to abide by their findings.

⁹ There is an essential difference between arbitration and mediation. Industrial arbitration is the process of referring disputes between employer and employees to the decision of impartial adjudicators. It differs from ordinary collective bargaining (sometimes called conciliation) by its use of outsiders not parties to the dispute. It differs from mediation (also frequently called conciliation) in that the outsiders are called upon to make actual decisions instead of merely using their good offices to bring the contestants to an agreement.

an employer¹⁰ and any of his employees, and the parties there-to are unable to adjust it, either of the parties to the dispute may make application to the Minister for the appointment of a Board of Conciliation and Investigation, to which Board the dispute may be referred,"¹¹ and in the event such application has been made by either party, it becomes "unlawful for any employer to declare or cause a lockout or for any employee to go on strike, on account of any dispute prior to or during a reference of such dispute to the Board."¹²

Object of the Act to avert or postpone strikes. The sole objective of the Act being to avert, or at least postpone, strikes and lockouts, it may be said that its successful administration is not due merely to the enforcement of all of its provisions, but also to abstaining from such enforcement. "Peace at any price"—finding a basis of amicable adjustment of the situation as it actually exists—is the sole guide of the Commission in making its recommendation. Thus it abstains from imposing penalties provided in the Act when strikes actually do occur.¹³ The lawmakers wished to provide for practical solutions of industrial disputes and definitely set forth in the Act that the Board's recommendation shall state in plain terms, and avoiding as far as possible all "technicalities" what in its opinion ought or ought not to be done by the disputants to bring about an adjustment of their differences. Unhindered by involved legal terminology and unrestricted by hard and fast rules which would be inapplicable in many situations that could not be anticipated by the law makers, the Board was

10 Within the meaning of the Act the term employer is restricted to a person, company, or corporation employing ten or more persons and owning or operating mines, transportation or communication facilities, or public utilities. Section 2 of the Act.

11 Section 5 of the Act.

12 *Ibid.*, Section 56.

13 The author of the Industrial Disputes Investigation Act (W. L. Mackenzie-King, Deputy Minister of Labor) declared that the "government has never laid particular stress upon the penalty end of it." (Selekman, *Postponing Strikes*, p. 118.

empowered to make recommendations most likely to furnish a plausible meeting ground for employer and employee.

The rights of government should be protected. It would seem almost axiomatic that society as a whole, represented by its established government, has the right to protect itself from disputes or conflicts arising among any of its members, either as individuals or as organized groups. And yet, both in Canada and in the United States, statesmen have attempted to find a formula for the acceptance by labor and capital of compulsory arbitration. In Canada, capital was cajoled into acquiescence by the arguments of the Minister of Labor that the government had aided in increasing profits.¹⁴ In the United States in similar fashion the Secretary of Agriculture pleaded with organized labor to support such measures upon the thesis that the government had increased the income of the wage earner. The apologia for society's inherent right to protect itself against disruption of its normal life would be analogous to asking observance of an ordinance closing liquor stores at midnight upon the theory that shopkeepers are permitted to make profits out of liquor and drinkers are protected against dangerous spirits. A clearer concept of society's interest was enunciated by Chief Justice Hughes when he declared that the government had an inherent right to enact any laws which would protect it from disruption of commerce and the evils of unemployment.¹⁵

But in Canada capital and labor were not concerned with abstractions regarding the right of society; their attitude to-

14 In reporting to the Minister of Labor on an existing strike, W. L. Mackenzie-King, Deputy Minister of Labor, stated that when "it is remembered that organized society alone makes possible the operation of mines to the mutual advantage of those engaged in the work of production, a recognition of the obligations due to society by the parties is something which the state is justified in compelling if the parties themselves are unwilling to concede it."

15 *National Labor Relations Board v. Jones and Laughlin*, 299 U. S. 534 (1936). Said the Court: "Refusal to confer or negotiate has been one of the most prolific causes of strife. This is such an outstanding fact in the history of labor disturbances that it is a prior subject of judicial notice."

ward the Industrial Disputes Investigation Act merely reflected their own appraisal whether the Act was advantageous or inimical to their own interests.

Attitude of Canadian labor and employer. Canadian labor was by no means consistent in its attitude toward the Act; from year to year, it shifted from approval to opposition. Generally in favor of its passage, the workers later demanded amendments and advocated repeal. By the end of the World War, Canadian workers voiced almost general approval; and, when it was declared unconstitutional, they strongly advocated an amendment which would keep it in force.¹⁶

Canadian employers, too, alternately opposed and favored the Act with the passing years. When Ben M. Selekmán was compiling data for his study in 1927, he noted that "in general, Canadian employers may now be said to approve of the Disputes Act."¹⁷ This was in contrast to previous opposition on the part of employers which Benjamin Squires recorded in his report of July, 1918.¹⁸ It is interesting to note that the opposition on the part of the Canadian employers voiced the same argument as did employers regarding the National Labor Relations Act in the United States: namely, that the workers, even though acquiescing in the findings of the Board, were not permanently and definitely bound as were the employers; that the workers could disregard agreements and demand higher wages or other improved working conditions beyond those to which they had previously agreed.

Public opinion. Realizing that employers and workers would be reluctant to yield their respective demands, the Canadian lawmakers counted on the opinion of the public at large which was not a party to the dispute. A salient part of the Industrial Disputes Investigation Act, as provided in Section 26, was

¹⁶ Selekmán, Ben, *Postponing Strikes*, Chapter VI.

¹⁷ *Ibid.*, p. 200.

¹⁸ Squires, Benjamin, *Operation of the Industrial Disputes Investigation Act of Canada*, Bulletin No. 33, U. S. Department of Labor, Bureau of Labor Statistics.

the widespread publication of the findings of the boards. The anticipation that the public would insist that both labor and employer accept the findings of the board did not materialize. Until 1927, as reflected in Selekman's careful survey,¹⁹ the boards themselves were probably responsible for this passive attitude on the part of the public; their reports were scanty, phrased in technical terms, and almost incomprehensible to the lay mind. That the public response might have been wholly different were the recommendations of the boards directed to the popular mind, may be gauged by the effectiveness of the appeals which Premier Hepburn and the Mayor of Oshawa addressed to the public and workers during the recent strike at the General Motors plant in Ontario.

The success of the Canadian Act. Bearing in mind the varying and variable attitudes of employers and employees, real accomplishment in averting or postponing strikes and prompting adjustments between the disputants may be attributed to the Industrial Disputes Investigation Act. A study made in 1935 shows that out of 638 disputes referred to boards, 589 of these were settled without a strike.²⁰ Since the original Act was passed in 1907, there have occurred 657 strikes in the public utility industries in violation of the Act. Over 90 per cent of the applications were made by employees; but the employers themselves took the initiative in 45 instances. The number of strikes averted or ended is very impressive; and while a few strikes were called or continued despite the appointment of boards, labor observed the provisions of the Act.

Two tests may be applied to gauge the effectiveness of the Act. The first lies in the nature of the reports submitted by boards. Obviously, if these reports are in the main unanimous, we may conclude that all parties involved found them acceptable. This does not mean that employers or employees were wholly satisfied with the outcome. Inevitably, in a number of

¹⁹ Selekman, *op. cit.*, p. 206.

²⁰ Selekman, B. M., *Law and Labor Relations Business Research Studies*, Vol. XXIII, No. 1 (1936), p. 8.

these disputes, either or both sides must have yielded one or more points considered important in order to achieve agreement. But as most settlements of industrial disputes usually involve compromises, it may be inferred that the reaching of a unanimous report does indicate satisfaction, however more desirable a complete victory on all points might be. By this test the evidence indicates a considerable degree of success. Thus, 311, or over three-fifths of the reports, were unanimous in every respect. Employees' representatives dissented from the majority in 105, or about one-fifth of all reports submitted, and employers' representatives in 65, or about one-eighth.

The second test of the efficacy of the Act lies, naturally, in its success in averting or ending stoppage. The figures reveal a remarkable record of achievement. They show that of the 640 disputes referred to boards, strikes were averted or ended in 589, or 92 per cent.²¹

Undoubtedly, Canada gained much from the operation of the Industrial Disputes Investigation Act; it kept men at work while the boards were seeking to find some common ground for adjusting their demands upon employers; it averted violence and disruption of economic processes while the leaders of labor and capital, through their chosen representatives, discussed their respective viewpoints under the supervision of an impartial chairman.²²

The Canadian Act and sit-down strikes in motors. This briefly, in theory and practice, is the Canadian Industrial Disputes Investigation Act. It is, therefore, natural to inquire what was its application and its workings in the recent sit-down strike in the General Motors plants in the Province of Ontario. The facts are still fresh in our minds: in the Spring of 1937, thirty-seven hundred employees of the General Motors of Canada,

²¹ *Ibid.*, p. 8.

²² Section 7 provided: "Of the three members of the Board one shall be appointed on the recommendation of the employer and one on the recommendation of the employees (the parties to the dispute), and the third on the recommendation of the members so chosen."

Ltd., struck at the Oshawa plant, and the company itself stopped production at its Windsor plant, thus ending employment for 400 more workers. The workers were prompted by orders from the United Automobile Workers of America, and they adopted the sit-down tactics then in vogue in the United States. Thus Canada was faced with a strike and a lockout in the plants of the same company. But neither employer nor employees invoked the Industrial Disputes Investigation Act. Possibly there was some doubt whether this labor disturbance came within the province of the Act which made provision for basic industries, public utilities, and interstate transportation agencies; however, it is clear that the Minister of Labor could have taken the initiative since the Act clearly empowers him to do so in cases of "any dispute which the Governor in Council may by reason of any real or apprehended national emergency declare to be subject to the provisions of this Act."²³ But, as has been observed earlier, the success of the Act in averting, postponing or ending strikes was not always due to its application, but often to abstaining from enforcing its provisions. Although Canada like all British dominions is characterized by a deep observance for the law, the operation of the Industrial Disputes Investigation Act was based not on quibbles of legal terminology but on a common-sense method of effecting its objectives in the peculiar circumstances of each labor dispute.²⁴ In the General Motors strike the authorities concluded that the most effective methods were the appeal to the worker to be independent of "foreign" American labor agitators, and the marshaling of police and militia to terminate sit-downs on company property, which were legally regarded as trespass.²⁵ Public opinion, too, played an important part; the

²³ Section 2aiii.

²⁴ Section 26 of the Industrial Disputes Investigation Act charged the inquiring board "to avoid technicalities." And Section 49 provides that "the board may at any time dismiss any matter referred to it which it thinks frivolous or trivial."

²⁵ Premier Hepburn was quoted in press dispatches as saying "We don't need injunctions to take care of sit-down strikes in Ontario. They are

Premier of Canada made constant appeals to the citizens of Oshawa. As a result, the strike was settled with a distinct disavowal of the C. I. O., the American union which had agitated it.

The Canadian Act and recent U. S. laws. If, then, these are the broad conclusions that emerge from the operation of the Disputes Act, what is there pertinent for our present problems of law and labor relations in the United States? Unquestionably the problem upon which our recent legislation has concentrated has been that rising from the issues of employees' representation and collective bargaining. Thus three Acts for federal intervention on the statute books embody similar provisions for defining and enforcing rights in industrial relations. The Railway Labor Act²⁶ makes these provisions part of a rounded machinery for settling all disputes; the Bituminous Coal Commission Act,²⁷ generally known as the Guffey Act, incorporates them into a program for codifying and stabilizing the industry; and the National Labor Relations Act, commonly referred to as the Wagner Act, centers upon them in all industry as they threaten disputes "burdening or obstructing interstate and foreign commerce." All three laws affirm the right of employees to representation by spokesmen freely chosen without interference, restraint, or coercion by employers. All define and prohibit as unfair practices certain specific activities on the part of employers. The Railway Labor Act and the Wagner Act forbid: (1) discrimination against employees for joining, or not joining, a labor union, or participating in its activities; and (2) subsidy to, or special support of, company unions. The Guffey Act prohibits employers from requiring membership in any company union as a condition of employment.

absolutely prohibited by law and I intend to enforce it." Hepburn further revealed that he would send police and summon help from Ottawa if such a strike were attempted to be held there. *New York Times*, March 18, 1937.

26 May 20, 1926, c. 345, as amended June 21, 1934, c. 691, 45 U. S. C. A. Sec. 151 H.

27 August 30, 1935, 15 U. S. C. A. Sec. 801 H.

Under this Act, and the Railway Labor Act, representatives chosen by a majority of employees in any unit become spokesmen for collective bargaining purposes of all workmen in that unit. Under the Coal Conservation Act maximum hours and wage rates written into agreements negotiated by representatives of a majority of miners and of the producers of two-thirds of the annual tonnage are to be accepted in the territory concerned. Administration of these provisions is vested in permanent boards of three members in each case. Under all these laws, disputes over who shall represent employees are to be settled by the respective boards by means of secret elections or any other appropriate, or fitting, method.

The Canadian Act recommends mediation. The Canadian law-makers believed that employer-employee conflicts could be settled by a postponement of impending or existing strikes and lockouts until an investigation was made of the causes of the dispute and recommendations advanced as a basis for settlement; public opinion was relied upon to force the acceptance by employer and employee of the recommendations made by the Boards.

Both Acts make it mandatory for employers to bargain collectively. As we pointed out above, the American National Labor Relations Act established no machinery for mediation or arbitration of strikes, although it did outlaw lockouts by employers of workers because of their union activities. Succinctly stated by the United States Supreme Court, the National Labor Relations Act "does not compel any agreement between employer and employees; it does not compel any agreement whatsoever."²⁸ The sole objective of the Act was to encourage employers to reach agreements with their workers through the realization that large corporations were no longer matched against the feeble efforts of single workers, but were obliged to deal with large organized groups of their employees. The

²⁸ Chief Justice Hughes, *National Labor Relations Board v. Jones and Laughlin Steel Corporation*, 299 U. S. 534 (1936).

Act made it mandatory for employers to "bargain collectively" with the representatives of the majority of their workers, making it illegal for the employer to refuse so to bargain collectively, or to hinder, restrain, or penalize workers from joining unions of their own selection. As enunciated in Section 1 of the Act, if employer and worker are on an equal footing there is great likelihood for agreement between them; because "experience has proven that protection by law of the right of the employees to organize and bargain collectively . . . removes certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes . . . by restoring equality of bargaining power between employer and employees."²⁹ This concept of the American legislators was voiced by the Supreme Court of the United States in its review of Congressional enactment relating to railroad workers—said the Chief Justice: "The experience under the Railway Labor Act had demonstrated the efficacy of such legislation in preventing industrial strikes."³⁰

Fundamental difference between Canadian method and N.L.R.B.

This, then is the fundamental difference in the Canadian and American methods of promoting industrial peace: in Canada, an attempt is made to find common ground for mediation, with postponement of strikes and lockouts while the investigating board makes its investigation; in the United States, employers are forced to bargain collectively with their workers. But there are other differences between the Canadian and the American statutes: in Canada boards are appointed for each individual dispute, at the request of either employer or employees, each disputant nominating a board member, with an impartial chairman selected by these two representatives;³¹ in the United States the board is permanent and makes investi-

²⁹ National Labor Relations Act, approved July 5, 1935. Public No. 198, 74th Cong.

³⁰ *Virginia Railway Co. v. System Federation* No. 40, 300 U. S. 516 (1936).

³¹ Section 7 of the Industrial Disputes Investigation Act.

gations only at the request of the workers.³² The Industrial Disputes Investigation Act makes illegal strikes or lockouts during the sitting of the boards; the National Labor Relations Act cannot forbid any strikes. The Canadian Act provides for investigation at the request of any aggrieved workers; the American law recognizes only the representatives (or claimed representatives) of the majority of the workers who are empowered to bargain for all the employees. It should be noted, too, that the operation of the Canadian law is restricted to public utilities and basic industries, whereas the National Labor Relations Act extends to all enterprises which affect interstate commerce.

Could we profit by the Canadian system? We come now to the final query: to what degree could the United States profit by the provisions embodied in the Canadian plan? Were these pages written five years ago, it would have been necessary to state almost categorically that our "national psychology" differed from the Canadian in that Americans were traditionally averse to any governmental control of employer-employee relationships; the average citizen feared that such interference might ultimately extend to his own freedom in employment. This is no longer true. The present Administration has accustomed the nation to a large measure of federal regulation heretofore considered inapplicable under our form of government. True, even apart from employer groups, a very large minority still clings to the *laissez faire* theory,³³ but it is indisputable that the mass of the American people want their government to exercise its power in establishing industrial peace. This does not mean that they have changed their con-

32 National Labor Relations Act, Section 3.

33 Henry Ford is probably the outstanding exponent of "rugged individualism"; namely, that employer and worker should respectively be free to hire and seek employment at will. But the Supreme Court of the United States has said that this "freedom of contract" is now a fiction; that there can be no freedom of contract without equality of bargaining power. (National Labor Relations Board v. Jones and Laughlin, *supra*).

cepts regarding private property or their passion for fair play: witness the almost unanimous outcry of the liberal and conservative press against the sit-down strikes, and the widespread demand of citizens that the government put an end to such disregard of legal rights. It is, therefore, not public opinion which would stand in the way of legislation for mediation³⁴ or even compulsory arbitration. In fact, even before the advent of the "New Deal" several attempts were made by the states, and Kansas enacted statutes providing for compulsory arbitration.³⁵

The problem of outlawing strikes in this country. It is, however, very doubtful at this time whether organized labor in the United States would acquiesce in a plan which, as in Canada, would outlaw strikes for a long period whenever the employer asked an investigation, or the automatic ending of strikes upon the appointment of an inquiring board at a time when labor considered the strike as a more effective means of gaining its ends. As early as 1910 President Samuel Gompers of the American Federation of Labor denounced as "un-American" any legislation which would hamper the right to strike. That has been the consistent attitude of organized labor ever since; the history of organized labor in American life reflects continued warfare against even the use of court injunctions to restrain strikers. On the other hand, large employers

³⁴ Of course, the present and preceding Railway Labor Acts provided for mediation. Mediation, without specific legislative enactment is not new in America. Theodore Roosevelt, as President of the United States, aided in settling a long strike of coal miners. A more recent example is the work done by Assistant Secretary of Labor Grady in the widespread maritime strike and Governor Murphy of Michigan in conciliating workers and auto manufacturers.

³⁵ The Kansas law, passed in 1920, created an industrial court with extensive powers over employers, workers and industries affected with a public interest. It came before the U. S. Supreme Court (*Wolff Packing Co. v. Court of Industrial Relations*, 262 U. S. 522, 1923), and that tribunal held that the manufacture of foods was not closely enough affected with a public interest, and hence that part of the law was declared unconstitutional. See Chapter I, *supra*, for fuller discussion.

and employer organizations have vigorously opposed the appointment of mediation or arbitration boards whenever they believed themselves in a strong position to defeat the demands of their workers, either through lockouts or by the use of strike breakers. But, in the light of recent Congressional investigation and enactments, employers are deprived of their most effective means in defeating strikers, and probably will no longer be averse to legislation which will bring about amicable adjustments in industrial disputes.³⁶

Society and industrial warfare. It now seems that the party most vitally concerned with the evils of industrial warfare—Society itself—will succeed in forcing both organized labor and employers to refrain from strikes and lockouts until unbiased, qualified and social-minded mediators study their respective grievances and recommend a fair basis of adjustment; and, in the event that such recommendations are not accepted by the disputants, speedy arbitration not subject to the whims of either party may be resorted to. In other words, the evils of strikes and lockouts have become too disastrous for the American people to rely solely upon a mediation plan which is the core of the Canadian Industrial Disputes Act and which depends upon public opinion to force acceptance of the mediators' findings. Both American industry and labor—and certainly, the public—will profit most through definite arbitrations by boards of unquestioned qualifications and honor, as established by law.

36 The National Labor Relations Act compels employers to "bargain collectively with the representatives of their employees", and makes it illegal to discriminate against or discharge any employee for membership in labor organizations. Section 8.

CHAPTER V

THE DEVELOPMENT OF NATIONAL LEGISLATION AFFECTING RAIL- ROADS. THE MEDIATION BOARD

The federal government and railway labor. Federal legislation to regulate the railroads began with the passage of the Interstate Commerce Act of 1887. Until that time there had been a few efforts made by the states. However, in 1886 the United States Supreme Court in the *Wabash Case*¹ undermined the effectiveness of all state regulation and thereby increased the demand for federal regulation. The Interstate Commerce law provided against discrimination, prohibited the pooling of traffic, made it illegal to charge more for short hauls than for a long haul over the same line, and required the railroads to file their tariffs. The law also created an Interstate Commerce Commission of five members to administer the measure. This Commission was empowered to investigate the business methods and practices of any road, to examine railroad records, and to compel the attendance of witnesses in its investigations. If the roads refused to carry out orders of the Commission, the offending companies might be brought before the federal courts. If the Commission discerned a violation of the law, it could order the violators to desist from their illegal acts and fine them five thousand dollars; the victim

¹ *Wabash, St. Louis and Pacific Railway Co. v. Illinois*, 118 U. S. 557. A statute of Illinois enacted that if any railroad company should within that state charge the same or more for any distance than for the longer distance, it should be liable to a penalty for unjust discrimination. The U. S. Supreme Court stated that "it is not the railroads themselves that are regulated by this act . . . so much as the charge for transportation, . . . if each one of the States through whose territories these goods are transported can fix its own rules for prices, for modes of transit (etc.,) . . . it is readily seen that the embarrassments upon interstate transportation, . . . might be too oppressive to be submitted to. 'It was', in the language of the court cited above, 'to meet just such a case that the commerce clause of the Constitution was adopted.'"

of discrimination could also collect damages. The order did not have the binding force of a decree by a court, nor did its power cover traffic wholly within a given state. The Commission had an enormous amount of work to do: it had to collect statistics, hear complaints, carry on prosecutions in the federal courts, and try to make a poorly written law work.²

From this law to the present time congressional enactments, executive orders, and judicial decisions have gone far to maintain industrial peace in the railroad industry.

The railroads have provided some of the most desperate of all the labor-industrial disputes in American history. At the same time the federal government has put forth its best efforts to settle these strikes and maintain continuity of service. It was in the railroad industry in 1894 that the federal government for the first time called out the United States Army on its own initiative to protect property and guard the mails.³ It is in the railroad industry that governmental machinery has been most strongly brought to bear for the purpose of eliminating industrial strife.

The federal government's power to regulate interstate commerce.

Because of the peculiar position of both the railroad and railway labor and also because of the federal government's exclusive jurisdiction and power to regulate interstate commerce, the history of the federal government's relationship to the railway industry does not furnish a model applicable to other industries; yet this history does serve to point out, not only what the government has done in this industry, but also what might be done in other industries if similar powers existed.

Although the first Act of the federal government for the settling of railway labor disputes was not passed until 1888, mediation and arbitration had for a number of years attracted public attention. As early as 1882 Congress began the con-

² Dewey, D. R., *National Problems* (1907), p. 100, states "The interstate commerce law was full of ambiguities and required a large degree of discretion in its execution."

³ *In re Debs*, Petitioner, 158 U. S. 564 (1895).

sideration of methods and devices for the settlement of railway labor disputes. On June 15, 1882, Senator Morgan of Alabama offered a resolution calling for the appointment of a committee to investigate and to propose a solution for railway labor trouble.⁴

The federal Act of 1888 which was the first federal law for the arbitration of industrial disputes, was approved by President Cleveland on October 1, 1888.⁵ This law provided two methods of adjusting disputes between the operators and their employees which threatened to interrupt interstate commerce: (a) voluntary arbitration and (b) investigation at the request of either party, and if agreed to by both, the dispute to be submitted for decision to a board of three arbitrators, one appointed by each party and a chairman selected by the two. Perhaps the chief defect of this Act was that the submission of a dispute to a board was not only dependent upon the consent of both parties, but no provision was made for the enforcement of the award.

The appointment of a fact-finding Commission. The Act authorized the appointment by the President of a temporary commission to investigate the causes of any labor dispute on the railroads. The United States Commissioner of Labor was to be chairman. The services of the commission might be invoked by the President for the purpose of settling a controversy or might be applied for by one of the parties or by the executive of a state.

Government seeks to use the injunction. It was during the year 1888 that a series of costly strikes climaxed in a strike of the Chicago, Burlington and Quincy Railroad, which focused both public and official attention. The government sought to stop this strike through an injunction obtained in the federal court. About the only importance that can be attached to this Act was that it was the first one to be passed of this type of

⁴ *Congressional Record*, Vol. XIII, 47th Cong. (1882), p. 4924.

⁵ Act of 1888, 25 Stat. at Large 501.

federal intervention in railroad labor disputes. The arbitration provision of the Act never functioned during its ten years on the statute books. The investigation provisions of the Act were used only once during the famous Pullman strike of 1894.⁶ The investigating commission did little to settle the strike. It did, however, make recommendation for the appointment of a permanent commission of three members which was to have in the field of railway labor authority similar to that of the Interstate Commerce Commission in the field of railway rates, the decisions of such a commission to be binding on the parties. The investigating commission also recommended legislation to encourage the incorporation of labor organizations.

The Erdman Act and intervention. The Erdman Act of 1898,⁷ mentioned in a previous chapter, was the second step in federal intervention and superseded the Act of 1888. This law for the first time provided for mediation and voluntary arbitration in railway labor disputes. The interesting part of this Act is the provision that the U. S. Commissioner of Labor and the chairman of the Interstate Commerce Commission should serve as mediators when "called upon" by either party; but they did not initiate proceedings. If, however, arbitration was resorted to, each side selected one arbitrator and the two selected the third. Pending decision there was to be no change in the *status quo* of the parties to the dispute which has been the rule in all subsequent arbitrations. Also a thirty-day notice by either side was necessary to vacate the award. There was no provision made for an investigating committee to ascertain the facts of the dispute. The Act did, however, forbid "yellow dog" contracts and discriminatory discharge. It also differed from the Act of 1888 in another way; it did not make provision for investigation on the initiative of the government. The Erdman Act was somewhat narrower than the Act of 1888; it was limited to railroads engaged in interstate commerce and

⁶ *In re Debs*; see also discussion in Chap. IV *supra*.

⁷ 30 Stat. at Large 424. See Chap. III, *supra*, "Legislative and Administrative Orders Affecting Labor Relations."

such of their employees as were engaged in train service. It did not apply to employees of such railroads engaged in other occupations.

The two parts of the Act relating respectively to conciliation or mediation and to arbitration are entirely distinct. The provisions as to mediation were briefly these:

In case of disputes which interrupt or threaten to interrupt interstate commerce, the chairman of the Interstate Commerce Commission and the Commissioner of Labor are directed, upon request from either party, to endeavor to settle the dispute, or, failing to reach a settlement, to endeavor to secure the submission of the dispute to arbitration.

The chief gain of the Erdman Act over that of 1888 was in the provision for a permanent governmental agency always ready to act on request of either party. It was applied only once for the first eight years it was on the statute books, but during the next seven years it was frequently called into operation.

Requirements of the Erdman Act. The Erdman Act under its provision for arbitration did require that the parties should bind themselves under liability of damages to refrain from strikes or lockouts pending the arbitration, and not to evade the award for at least three months by ceasing to work or by discharging without thirty-day notice. This phase of the bill was the recommendation made by the investigating commission created by the Railway Labor Act of 1888.

The investigation features of the Act of 1888 were omitted from the new law, but the provisions for voluntary arbitration were retained and strengthened in several respects. It was provided that if the mediation and conciliation efforts of the commissioners should be unsuccessful, then the commissioners should "at once endeavor to bring about an arbitration of said controversy." The Act went on to provide details for such arbitration.

The section of the Act prohibiting the "yellow-dog" contract was declared unconstitutional in 1908.⁸

The first attempt to use the mediation and conciliation provisions of the Erdman Act was unsuccessful, the railroads refusing to enter into any proceedings. Thereafter for almost eight years no use was made of the law. However, in December of 1906, beginning with a dispute of the Southern Pacific Railroad and continuing until the law was repealed in 1913, sixty-one cases were settled under the provisions of the Act: twenty-six by mediation and arbitration, and six by arbitration. The courts were never called upon to enforce an award, although there were complaints from time to time that one or the other of the parties had not lived up to an award.

The Newlands Act of 1913. The Newlands Act was passed in 1913.⁹ The experience during the last seven years that the Erdman Act was in effect made it evident that it was mediation and not arbitration on which the government wished to place its main reliance for the settlement of labor disputes. The Act established a permanent Board of Mediation and Conciliation, consisting of a commissioner of mediation and conciliation to be appointed by the President who was to give his full time to the work, together with two additional commissioners designated by the President from among other officials of the government. The Act also created the position of an assistant commissioner of mediation and conciliation and authorized him to act for the Board in individual cases.

8 *Adair v. United States*, 208 U. S. 161 (1908).

The indictment in the Adair case was in the District Court of the U. S. for the Eastern District of Kentucky. The defendant Adair was an agent of a railroad company engaged in interstate commerce. He discharged one of his employees because of the latter's membership in a labor union, which procedure the Act of June 1, 1898, prohibited (Sec. 10). The court held that the section was an invasion of the personal liberty, as well as of the right of property, guaranteed by the Fifth Amendment of the Constitution. "Such rights and liberties embrace the right to make contracts for the purchase of labor of others and equally the right to make contracts for the sale of one's own labor."

9 38 Stat. at Large 103.

Changes in the provisions of arbitration. The Newlands Act also made substantial changes in the provision for arbitration. In place of arbitration boards of three members it provided for an arbitration board of six members. Two members were to be chosen by each party to the dispute and these four were to choose the remaining two arbitrators. It was believed that it would be more satisfactory if the responsibility for a decision rested upon two neutral arbitrators rather than upon one.

The final important change made in the agreement for arbitration was a provision that in the event of a difference arising as to the meaning of any part of the award, such differences should be referred back to the same board for a decision.

Number of cases successfully adjusted. The report of the Board of Mediation and Conciliation for the period from 1913 to 1919 showed that the Board had handled 148 cases involving 586 railroads and over 620,000 employees. Seventy of these cases were adjusted by mediation alone, 21 by mediation and arbitration, and 19 by mutual agreement of the parties after the Board's services had been invoked. In 1917 the railroads were taken over by the government, and most of the remaining cases were handled by the Railroad Administration.¹⁰

The Newlands Act establishes mediation. The Newlands Act definitely established mediation, under prescribed conditions, as the primary and most effective method of government intervention in railway labor disputes. But the experience with this Act also revealed its limitations and made plain that arbitration, although useful as a second line of defense when media-

¹⁰ This study deals with the development of national legislation under normal conditions. For a report of the railroads during the war, see *Report of the Secretary of the National War Labor Board to the Secretary of Labor, May 31, 1919*. The Board pursued liberal labor policies throughout, and no strikes or other serious friction resulted in the three years the railroads were operated by the government. The Division of Conciliation of the Department of Labor settled more than one half of all the complaints referred to the Board; p. 6 of the Report.

tion failed, had its own distinct weaknesses. The main difficulties arose from the imperfect machinery for interpreting mediation agreements and arbitration awards. The railroad brotherhoods charged that the management had assumed the prerogative of interpreting all agreements and awards. When a general movement for a basic 8-hour day with time and a half for overtime was launched by the Train Service Brotherhoods in 1916 and the carriers offered to arbitrate, the men refused to enter into an arbitration agreement. The conferences began on June 1 and lasted for two weeks with no results. The Brotherhood proceeded to take a strike vote and announced on August 8 that more than 90 per cent of their members, involving some 400,000 railroad men, favored the strike. On August 9 the railroad managers invoked the services of the United States Board of Mediation and Conciliation. The labor leaders reluctantly acceded to their request and postponed the calling of the strike. The mediation which followed was fruitless, and when the Board suggested arbitration the trainmen refused.

President Wilson calls a conference to settle the railway dispute.

On August 13 President Wilson invited the parties to the dispute to confer with him at Washington. The President proposed the following as a basis of agreement: (1) that the 8-hour day should be conceded; (2) that the decision as to extra pay for over-time demanded by the trainmen should be postponed until facts were collected as to the effects of the 8-hour change; (3) that a commission should be appointed to report upon these effects. The labor leaders were satisfied with these proposals, but the managers were not. On August 17 the railroad presidents were invited to Washington, but they refused to agree with the President's proposals on the ground that they must stand firm for the principle of arbitration. The labor leaders had issued a strike order to become effective on September 4. On August 29 the President appeared

before the House and recommended immediate legislation which culminated in the Adamson Act of 1916.¹¹

The Adamson Act of 1916. The Adamson Act provided for: (a) an 8-hour day for train operators, and (b) creation of a commission to observe the operation of the 8-hour law. The commission was appointed by the President to observe the operation and effects of this provision during a period of six to nine months; and as provided for, pending the report of the Commission, and for thirty days thereafter, wages for the 8-hour day "shall not be reduced below the present standard day's wage, and for all necessary time in excess of eight hours such employees shall be paid at a rate of not less than the pro rata for such standard 8-hour workday."

Statements made at the time by both the brotherhood officials and railway executives indicate that apparently neither party was anxious to have this law enacted. But the dispute could not be settled under the Newlands Act, and the law was frankly adopted as an emergency measure to head off a strike that threatened to stop commerce throughout the nation.

The dispute finally settled by the Council of National Defense. The dispute, however, was finally settled not by the Adamson Act but through the offices of a committee of the Council of National Defense in March, 1917, on the eve of our entering the World War. There is no doubt that the law helped in settling the dispute but, nevertheless, it was through mediation by the committee that the final settlement was made.

Public attention and the Transportation Act of 1920. Perhaps the Transportation Act of 1920¹² directed attention more than any previous Act to the serious problem of settling labor disputes with the railroads. The attitude of the public toward the organization and the operation of "public utilities" had

¹¹ 39 Stat. at Large 721 (1916). This law was held to be constitutional in *Wilson v. New*, 243 U. S. 332, 37 Sup. Ct. 298 (1917).

¹² The Transportation Act of 1920 or the Esch-Cummins Law, as it was commonly referred to, 41 Stat. at Large 456 (1920).

been undergoing a decided change from the previous quarter century. A condition of affairs that had been largely academic had now become one of the most momentous of questions. The general public began to realize this difficulty more keenly than ever before in the summer of 1916 when the railroad brotherhood and the railroads reached such a point in their controversy as to cause grave concern on the part of the public at large. This controversy culminated in the passage of the Adamson law.

The U. S. Railroad Administration. No adequate account of the development of national legislation governing railways is possible unless special emphasis is placed upon the events and the period during the war when the government controlled the roads. Labor disturbances were bound to occur during this time of rising costs of living and lagging wages; these differences had to be equalized. The problem of providing adequate machinery to settle these disputes became the task of the United States Railroad Administration. The fact of centralized control should have been a help to the boards, but instead it offered additional difficulties.¹³ It meant nationwide standardization of wages and working conditions. This in turn fostered the growth of national labor unions. As a consequence, General Order No. 8, which provided for the right of self-organization without discrimination, probably helped the national labor unions along.¹⁴

Wages and working conditions established. With this background, General Order No. 2 was issued.¹⁵ This order established a Board of Railroad Wages and Working Conditions

13 The essential difference between the Esch-Cummins Act (The Transportation Act) and the Newlands Act in jurisdiction was that under the latter all employees of the carrier were included while under the Newlands Act only those engaged in train service were covered.

14 Under the "National War Labor Board" a commission of four members was appointed to make general investigation of wages and make a report to the Director General of Railroads, he in turn to issue orders setting forth policies and regulations.

15 *Ibid.*

composed of six members, three representing labor and three representing railroad management, for the purpose of drawing up wage agreements. There was also created a Board of Adjustment for the purpose of settling secondary disputes arising from interpretations of existing agreements. To meet these demands there were three such boards created: Railway Board of Adjustment No. 1 gave its time to the train-and-engine service; Board of Adjustment No. 2 was for the shop crafts; and Railway Board of Adjustment No. 3 was for telegraphers, switchmen, clerks, maintenance-of-way employees and railroad shop workers. These boards grew out of an agreement between regional directors and groups of unions.

The Railroad Labor Board grants to workers the right to self-organization. The Transportation Act of 1920 contained no specific provisions granting the right to workers of self-organization. Three such provisions, however, are found in Decision No. 119, handed down by the Railroad Labor Board on April 14, 1921. When the Act is stripped of its legal verbiage, it really provided only two things with respect to labor:¹⁶ that all disputes should be considered first in confer-

16 "The provisions of Title III and those concerning the U. S. Labor Board which it created were vague in their purposes, capable of a multiplicity of interpretations, and uncertain in their legal authority. They reflected an oversimplification of the problems of labor relations." *First Annual Report* of the National Mediation Board, June 30, 1935. The provisions of the Transportation Act of 1920 pertaining to labor are found chiefly in Title III—Disputes between Carriers and Employees:

It is the duty of carriers to use every means to avoid disputes interrupting the operation of the roads. In case disputes occur, mutual conferences between carriers and employees are to decide the dispute. If they can reach no agreement, the dispute is to be referred to a Railroad Board of Labor Adjustment.

The Adjustment Board may be established by agreement between any carrier and any employees.

Each such adjustment board shall: (1) upon the application of the chief executive of any carrier or organization of employees or subordinate officials whose members are directly interested in the dispute, (2) upon the written petition signed by not less than 100 unorganized employees or subordinate officials directly interested in the dispute, (3) upon the Adjust-

ence between representatives of the carriers and of the employees and an effort made to dispose of them; (b) that, if they could not be so disposed of, they were to be referred for adjustment to the United States Railroad Labor Board for hearing and decision.

ment Board's own motion, or (4) upon the request of the Railroad Labor Board whenever such board is of the opinion that the dispute is likely substantially to interrupt commerce, receive for hearing, and as soon as practicable and with due diligence decide, any dispute involving only grievances, rules, or working conditions (not decided by the conferences), between the carrier and its employees or subordinate officials, who are, or any organization thereof which is . . . represented, upon any, such Adjustment Board.

A Railroad Labor Board is established, composed of 9 members appointed by the President with the consent of the Senate. Three members are to represent labor, and are to be appointed from a list of six nominated by the employees; three are to represent the management group, and are to be appointed from a list of six nominated by the management; three are to represent the public and to be appointed directly by the President.

The President is to make the appointments if no nominations are made.

No member of the Labor Board shall have a pecuniary interest in any railroad.

One member in each of the three groups on the Labor Board is to serve for one, two, and three years respectively. Successors are to serve for five years. Each member shall receive a salary of \$10,000.

The Labor Board shall hear, and as soon as practicable and with due diligence decide, any dispute involving grievances, rules, or working conditions, in respect to which any Adjustment Board certifies to the Labor Board that in its opinion the Adjustment Board has failed or will fail to reach a decision within a reasonable time, or in respect to which the Labor Board determines that any Adjustment Board has so failed or is not using due diligence in its consideration thereof. In case the appropriate Adjustment Board is not organized under the provisions of Section 302, the Labor Board may upon either the application of the carrier, the employees, or upon its own motion hold a hearing and decide any of these questions of grievances.

The Labor Board shall hear wage disputes not settled by mutual conferences and has the right to suspend any decisions made by mutual conferences if the decision involves an increase in wages necessitating a readjustment in the rates of the carrier.

Decisions of the Labor Board require a concurrence of at least 5 of the 9 members of the Board. In a decision on wages at least one representative of the public must concur.

All decisions are to be just and reasonable and in determining the justness and reasonableness of such wages and salaries or working conditions the board shall, so far as applicable, take into consideration among other relevant circumstances:

The weakness of the Act. The Board was soon swamped with cases, due in part to the failure of the railroads and their employees to set up regional adjustment boards. This threw many more cases upon the Board than its inadequate staff could handle efficiently. In the controversy in 1922 over working rules in the railroad shops, the employees refused to accept the Board's decision and went on strike; while the strike ended in failure, the Board's prestige was not enhanced. Soon after, the Pennsylvania Railroad flaunted another of the Board's decisions directing it to deal with the regular unions instead of its company-controlled unions. As the Board had no way of compelling the company to observe its decisions, the unions applied to the courts for a mandatory injunction. The United States Supreme Court held that the labor sections of the Transportation Act were constitutional; nevertheless, they provided for no stronger means of enforcement than public opinion.¹⁷

- (1) The scales of wages paid for similar kinds of work in other industries;
- (2) The relation between wages and the cost of living;
- (3) The hazards of the employment;
- (4) The training and skill required;
- (5) The degree of responsibility;
- (6) The character and regularity of the employment; and
- (7) Inequalities of increases in wages or of treatment, the result of previous wage orders or adjustments.

The Labor Board shall maintain central offices in Chicago; shall investigate and study relations between carriers and employees; shall publish its decisions annually.

The Board has the power to secure evidence, compel testimony, etc.

The Labor Board is to make public any violations of its decisions.

The duties of the Board of Mediation and Conciliation created by the Act of July 15, 1913, shall not extend to any dispute which may be received for hearing by any Adjustment or Labor Board.

¹⁷ This statute came before the United States Supreme Court for interpretation in two cases. Both grew out of the same labor controversy between the Pennsylvania Railroad Company and its shop-craft employees. The first case that came up for review was *Pennsylvania Railroad Company v. Railroad Labor Board* (261 U. S. 72). The action was one seeking to enjoin the Board from publishing a decision adverse to the carrier. The court decided that the injunction had been properly refused. It also held that the decisions

At the time of passage of the Act it was hoped not only by Congress but by the public generally that the economic interest of the public would prevent the development of serious or widespread labor disputes; this assumption, however, was incorrect. Either the public was apathetic or the disputants showed less respect than contemplated for public opinion. The Act failed in its purpose, the Railroad Labor Board lost caste, its decisions were openly flouted by both the employers and the employees, until the whole enforcement machinery of the Act broke down.

The Railway Labor Act of 1926. This background gave rise to a dangerous situation of which the employees and the carriers were both aware, and after a series of conferences of the leaders on both sides it was decided to request of Congress the passage of a new railway labor act. The result was the enactment of the Railway Labor Act of 1926,¹⁸ which was sponsored by both the carriers and by the railway labor unions.

of the Board were unenforceable by legal process; hence their publication was not enjoined.

The second case was *Pennsylvania Railroad System Federation No. 90 v. Pennsylvania Railroad Company* (267 U. S. 203). This question did not relate to the enforceability of a decision of the Labor Board but to the enforceability of the general duties prescribed by Section 301 of the Act.

The question before the Court in this case was not identical with that involved in the first Pennsylvania case. However, the Court considered its ruling in the first case conclusive as to the second. It was accordingly held that Section 301 of the Transportation Act did not set up any duties enforceable by law.

Chief Justice Taft in delivering the opinion said: "There is nothing compulsory in the provision of Title 3 of the Transportation Act of 1920, as against either a railroad company or its employees, upon the basis of which either acquired additional rights against the other which can be enforced in a court of law." Mandatory injunction does not lie to compel a railroad company to comply with a decision of the Railroad Labor Board on its judgment as to what legal rights the railroad company should surrender or abate in the public interest and in the interest of its employees to maintain harmonious relations necessary to the continuance of interstate commerce, and to avoid severing relations which they have a legal right to sever.

18 Railway Labor Act of 1926, Ch. 347, 44 Stat. 577 (May 20, 1926).

Purpose: to provide for the prompt disposition of disputes between carriers and their employees.

The Labor Board is abolished. Under the new statute the United States Railway Labor Board was abolished, and there was substituted in its place a tribunal known as the National Board of Mediation. Its function was not to decide but to endeavor to mediate disputes. Minor disputes relating to grievances or disagreements concerning the application or interpretations of existing agreements between individual carriers and their employees could be submitted to boards of adjustment set up on the properties of carriers and composed

The Act covers all carriers subject to the Interstate Commerce Act.

Boards of Adjustment are to be created between any carrier and group of employees for the purpose of handling disputes which cannot be settled by conference between employer and employees.

A Board of Mediation is to be established as an independent executive agency of the government. The Board is to be composed of five members appointed by the President with the consent of the Senate, and each serving for a term of five years with a salary of \$12,000 per year.

The Board is to consider disputes which cannot be settled by conferences or by adjustment boards. If the Board is unsuccessful it is to induce the parties to submit their dispute to arbitration.

At least a 30-day notice of intended change in rates of pay, etc., shall be given. No alteration of rates is to be made by the carriers until final action by the Board "unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Board of Mediation."

Whenever a controversy is not settled by conference, by adjustment boards, or by the mediation board it may be submitted to the arbitration of a board of three or of six, but no legal obligation is violated by the refusal to do so. One arbitrator is to be chosen by the employer, one by the employees and the third by the other two. The Board of Mediation names the third arbitrator if the two named by the parties cannot agree, and the same procedure holds for a board of six.

"Nothing in this Act shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this Act be construed to make the quitting of his labor or service by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent."

The Mediation Board is to notify the President of a dispute not adjusted which threatens to interrupt commerce. The President is then empowered to create an emergency board and no change of conditions shall be made until 30 days after its report.

Title III of the Transportation Act of 1920 is repealed.

of representatives of employees and carriers in equal numbers. The establishment of such boards was made permissive and not mandatory.

Awards legally enforceable. The Act further provided for voluntary arbitration of disputes, the awards to be legally enforceable. It also provided for the creation of emergency boards and required under certain circumstances that all parties hold the conditions in *status quo* until the remedial features were put into operation.

Workers to choose their own representatives. The Railway Labor Act of 1926 stated explicitly that railway workers should be free to choose their own representatives for the purpose of collective bargaining. After making it the mutual duty of the carriers and their employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, the Act provides:

Representatives, for the purpose of this Act, shall be designated by the respective parties in such manner as may be provided for in their corporate organization or unincorporated association or by any other means of collective action, without interference, influence, or coercion exercised by either party over the self-organization or designation of representatives except by designated authority.¹⁹

The Act encourages bona fide labor organizations. The importance of the above provision was to encourage *bona fide* labor organizations. In 1930 the United States Supreme Court not only held this provision constitutional but on the basis of it upheld an order of a federal district court, directing the disbanding of a company union by the Texas and New Orleans Railroad among its shop employees.²⁰

¹⁹ 44 U. S. Stat. at Large 577, Sec. 2.

²⁰ *Brotherhood of Railway and Steamship Clerks v. Texas & N. O. Ry. Co.*, 24 Fed. 426 (1928). The Company was charged with having violated the Railway Labor Act on the ground that, in setting up a company union for its clerks, it interfered with their free choice of representatives for collective bargaining purposes.

After this decision by the federal court, it became certain that under the Railway Labor Act of 1926 company unions and yellow dog contracts could no longer be used to dominate labor organizations.²¹

The Bankruptcy and Emergency Transportation Act. Another federal law that should be mentioned along with this Act is the Bankruptcy and Emergency Transportation Act of 1933.²²

Early in 1933 Congress amended the uniform Bankruptcy Act and in connection with these amendments certain labor provisions were included. These labor provisions are contained in Section 77 (o), (p), and (q) of the new Act.

Wages and working conditions to remain as prescribed by B. B. Labor Act. The first subsection (77 (o)) provided that "no judge or trustee acting under this Act shall change the wages or working conditions of railroad employees, except in the manner prescribed in the Railroad Labor Act," or as set forth in a wage agreement entered into in 1932 by the railroad labor organizations and the Class I railroads.

The second subsection (77 (p)) prohibited such judge or trustee from denying or in any way questioning the right of employees to join labor organizations of their choice and made it "unlawful for any judge, trustee, or receiver to interfere in any way with the organizations of employees or to use the funds of the railroad under his jurisdiction, in maintaining so-called company unions, or to influence or coerce employees in an effort to induce them to join or remain members of such company unions."

Yellow dog contract outlawed. The third subsection (77 (q)) prohibited judges, trustees, or receivers from requiring employees to sign yellow dog contracts and if such contracts had been in effect prior to the receivership, an appropriate order

²¹ It seems clear that the Act by this decision outlawed the yellow dog contract, since to require workers seeking employment to sign such contracts would clearly constitute interference or coercion exercised by the employer over the "self-organization" of the workers.

²² Public No. 420, 72nd Cong., approved March 3, 1933.

must be issued to the employees stating that the contracts had been discarded and were no longer binding on them in any way.

The Mediation Board lacks power. Under the Act of 1926 the only recourse of a party to a dispute was to invoke the services of the Board of Mediation. The Board, as organized under the 1926 statute, did not have any authority to decide anything; it could only meet. Mediation could not be successful where any party enters the proceedings with a fixed determination to yield nothing. Thus the whole matter of representation could be successfully stopped by a carrier through simply refusing to recognize the claim of any other than its company union to represent its employees. Hence the necessity for Section 2 of the 1934 amendment, in which Congress imposed a legal obligation upon all carriers to treat with employees' representatives.²³

The procedure of the Board. Other types of cases, relating to the interpretation and application of existing agreements, are handled in a somewhat different manner. The parties to the dispute, however, are required to confer with regard to the matter. If conferences fail, then the dispute may be referred to the National Board of Adjustment. Either method outlined by the legislation results in definite legal obligations. Decisions of the National Mediation Board may be enforced by definitely outlined procedure of law. Section 5 of the Railway Labor Act was amended and gave the function of the Mediation Board as follows:

The parties, or either party, to a dispute between an employee or group of employees and a carrier may invoke the services of the Mediation Board in any of the following cases:

(a) A dispute concerning changes in rate of pay, rules, or working conditions not adjusted by the parties in conference.

23 48 U. S. Stat. at Large 926 (73rd Cong.), (1934), 45 U. S. C. A., Sec. 151. The Railway Labor Act was passed in 1926, 44 Stat. at Large 577, amended in 1934 to read (Section 1): "The term 'Adjustment Board' means the National Board of Adjustment created by the Act. . . . The term 'Mediation Board' means the National Mediation Board created by this Act."

(b) Any other dispute not referable to the National Railroad Adjustment Board and not adjusted in conference between the parties or where conferences are refused. The Mediation Board may proffer its services in case any labor emergency is found by it to exist at any time.

The effectiveness of railway legislation. It is therefore almost beyond understanding to know why the larger field of interstate commerce should be without systematic labor adjustment machinery, when in the rather limited transportation field there is a complete and effective system of conciliation, mediation, arbitration, investigation, and adjudication. Such a system has been developed by Congress in forty years of experience in regulating railroad labor relations. The effectiveness of this legislation is demonstrated by the fact that peace has been maintained in the railroad industry since the adoption of the Act in 1926, with not a serious strike in more than ten years of operation.²⁴

There have been serious labor disputes in the railroads in this decade, but for every type of dispute that developed the special policies and procedures provided in the Railway Labor Act were able to meet the demands by securing settlements by mutual agreements or by acceptance of arbitration awards.

The Railway Labor Act amended in 1934. The Railway Labor Act as amended in 1934, like the National Labor Relations

²⁴ *First Annual Report* of the National Mediation Board, June 30, 1935, p. 8, states: "Since the enactment of the Railway Labor Act in 1926, there has been an almost unbroken record of peaceful settlement of labor disputes on the railroads. There was a strike of express drivers in New York City in 1928, which was not authorized by the organization representing the employees and which was settled within 48 hours by mediation; and another in 1929 on the Toledo, Peoria & Western Railroad, but this did not seriously interrupt commerce so as to require the appointment of an emergency board under Section 10 of the Act.

"That the railroad industry could maintain such a peaceful record, especially since 1932 when strikes and industrial unrest have been prevalent in other industries throughout the country, is testimony to the soundness and effectiveness of the labor policies formulated by Congress in the Railway Labor Act."

Act of 1935, guarantees the rights of employees to organize and to select representatives for collective bargaining. Section 2 of the Act as amended states that the general purposes are:

(1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; (2) to forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization; (3) to provide for the complete independence of carriers and of employees in the matter of self-organization to carry out the purpose of this Act; (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions.

Reasons for amending the Railway Labor Act. The chief purposes in amending the Railway Labor Act were: (a) to clarify the rights and safeguards of collective bargaining through provisions aimed at curbing company unions; and (b) to establish more effective machinery for the settlement of disputes arising out of the application and interpretation of rules governing wages, hours and working conditions. Provision was made for arbitration, mediation, adjustment boards and, in the event of an emergency, for the right of the President to create an investigating committee. The National Mediation Board,²⁵ composed of three rather than five members, replaced the Board of Mediation. When arbitration is resorted to, the new Board will have the power to appoint the neutral arbitrators.

It will be recalled that the original Act of 1926 provided for the establishment of boards of adjustment to handle disputes growing out of the interpretation of existing contracts, but because their creation was optional, few boards were estab-

²⁵ Section 4 of the amended Act abolished the Board of Mediation and established an independent agency in the Executive branch of the government, a board to be known as the "National Mediation Board."

lished. The amended Act makes it mandatory that a National Board of Adjustment be set up. It is divided into four sections, each section to handle the grievances of one of the four general classes of railway employees. This, it will be remembered, was the procedure followed during the war, discussed earlier in this chapter. Carriers and employees have an equal number of representatives on the National Railroad Adjustment Board, but to avoid stalling provision is made for the appointment of a neutral person to cast a deciding vote in cases where partisan members cannot reach a decision.

Basic principles for labor relations. The Act has laid down three basic principles for sound labor relations on the railroads. First, the relations are not to be governed by the arbitrary will or whim of the management or the men, but by written rules and regulations mutually agreed upon and equally binding on both. A positive duty is imposed on all carriers and their employees "to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions," and every carrier is required to file with the National Mediation Board a copy of every such contract. Secondly, the Act provides that conference and conciliation is to be the primary method of arriving at terms and conditions of employment, and both management and workers are required to confer and to conciliate their differences. "All disputes shall be considered and, if possible, decided with all expedition, in conference between representatives designated so to confer, respectively by the carrier or carriers and by the employees thereof interested in the dispute." Finally, the Act provides for collective bargaining agreements covering the whole of a craft or class of workers. These are made through the instrumentality of a labor organization which must have the support of at least a majority of the employees covered and it becomes part of the contract of employment between the carrier and each employee. "Employees shall have the right to organize and to bargain collectively through representatives of their own choosing. The majority of any craft or class of employees

shall have the right to determine who "shall be the representatives of the class or craft for the purpose of this Act."

Enforcement of rights kept separate from duties of mediation.

That the enforcement of these rights must be kept separate and distinct from the duties of the mediation authorities is well established by experience, and both the Labor Relations Act and the Railway Labor Act (1934) provide for keeping them separate. Experience also indicates that it is better to leave such enforcement to the ordinary courts and prosecuting authorities, as in the Railway Labor Act, than to entrust it to a special quasi-judicial body such as we have in the National Labor Relations Board.

Disobedience subject to a civil suit. No penalties are provided in the Act for failure to carry out duties and obligations contained in the Railway Act. But carriers who disobey awards of the Adjustment Board and of any arbitration boards set up in accordance with the Act are made subject to civil suits in federal district courts. The Railway Labor Act of 1926 prohibited interference with the designation of representatives but failed to provide penalties. Nevertheless, the United States Supreme Court held that such interference could be enjoined in equity proceedings.²⁶

The Federal District Court in 1935 ruled in a case under the Act that "the right of self-organization and representation in the matter of rates of pay, hours of labor, and working conditions is a property right, the loss of which would result in irreparable damage to complainants."²⁷

Other methods of settling labor difficulties have been tried. In creating the National Mediation Board, the Railway Labor Act provides that main reliance shall be on mediation and the securing of voluntary agreements between carrier and labor

²⁶ *Texas and New Orleans Railroad Co. v. Brotherhood of Railway Clerks*, 281 U. S. 584 (1930).

²⁷ *System Federation No. 40, Ry. Employees Dept., A. F. of L. et al v. Virginia Railway Co.*; Judge Way, Decision No. 239, July 24, 1935, 11 F. Supp. 621.

organizations. The history of railway labor legislation over a period of half a century shows that the government has experimented with other basic principles, such as arbitration, compulsory investigation, and judicial determination of controversies with enforcement left to the pressure of public opinion, as the Canadians do in their Industrial Disputes Act. However, all of these proved unsuccessful, and it was necessary to revert to mediation as the basic method for the adjustment of disputes.

Adequate machinery for settling labor disputes. However, as we have seen in the case of the United States Conciliation Service, to confer authority to mediate on government officers without imposing duties and obligations on disputing parties with respect to mediation is not very effective. In this regard the National Mediation Board is created by the Railway Labor Act as amended June 21, 1934 (Ch. 691, 48 Stat. 1185) and implemented with all the equipment for successful mediation.

The Act provides for the protection and integrity of the representatives chosen by the employees and for the guarantee of freedom from interference or coercion in formation and operation of labor organizations.²⁸

With these rights established and recognized, collective bargaining and the making and maintaining of agreements between duly accredited representatives of the employers and employees has become the prevailing method of organizing and defining labor relations in the railroads.

28 See Ch. 691, Sec. 2, 48 U. S. Stat. 1185, fourth paragraph under general duties, p. 1187: (1934).

Employee shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act. . . . Nothing in this Act shall be construed to prohibit a carrier from permitting an employee, individually, or local representatives of employees from conferring with management during working hours without loss of time, or to prohibit a carrier from furnishing free transportation to its employees while engaged in the business of a labor organization.

If a dispute arises among the employees as to who is the representative, the National Mediation Board investigates, takes a secret ballot, and certifies those who are fully accredited. These facts came before the United States Supreme Court in the case of *Virginia Railway Co. v. System Federation No. 40*,²⁹ and the law was upheld.

For many years prior to and up to the filing of that case the railway company interfered with, influenced, and coerced its mechanical department employees in such manner as to prevent their free designation of representatives and denied them the right to organize and bargain collectively. The company organized, supported, and maintained a company union known as the Mechanical Department Association of the Virginia Railroad, with which it treated as the representative of these employees for the purposes of collective bargaining.

Following the election held by the National Mediation Board, the company still refused to recognize or treat with the federation as a representative of their employees, regardless of the fact that the federation was selected by the overwhelming majority of the employees in a secret ballot, with the certification of that fact by the National Mediation Board.

In defiance of the mandate of the employees and the certification of the National Mediation Board, the railroad company continued to recognize and treat the Association as a representative of the employees for the purpose of the Railway Labor Act.

In the lower court, the district judge in referring to the situation said:

The Railway, acting through its officers and agents, has persistently interfered with shop-craft employees in their effort to organize for the purpose of collective bargaining, one of the principal objects if not the dominant object of the Railway Labor Act. This unlawful interference and purpose to influence its employees has been evidenced chiefly through activities of the Railway in

²⁹ *Virginia Railway Co. v. System Federation No. 40*, 300 U. S. 515 (1936).

creating and promoting so-called independent organizations, both before and since the election and by its fixed determination not to recognize or treat with the chosen representatives of the crafts unless they come from an organization under its control.³⁰

The court orders the company to treat with the representatives elected by the employees. Upon proof of these facts, the decree of the district court was a mandatory injunction requiring that the railway company treat with the federation elected by the employees, and it further enjoined the railway company from entering into any contract, agreement, or understanding concerning rates of pay, rules, and working conditions affecting its mechanical department employees, except with the employee-elected federation.

Section 2, paragraph 9, of the Railway Labor Act as amended in 1934 provides that:

If any dispute shall arise among a carrier's employees as to who are the representatives of such employees designated and authorized in accordance with the requirements of this Act, it shall be the duty of the Mediation Board, upon request of either party to the dispute, to investigate such dispute and to certify to both parties, in writing, within thirty days after the receipt of the invocation of its services, the name or names of the individuals or organizations that have been designated and authorized to represent the employees involved in the dispute, and certify the same to the carrier. Upon receipt of such certification the carrier shall treat with the certified representative of the craft or class for the purpose of this Act. . . . The Board shall have access to and have power to make copies of the books and records of the carriers to obtain and utilize such information as may be deemed necessary by it to carry out the purposes and provisions of this paragraph.

The statutory plan throughout the whole course of this legislation has been to encourage the adjustment of disputes in conference between the parties and to provide for the formation

³⁰ District Court of the United States for the Eastern District of Virginia, 4th Circuit, 84 Fed. (2d) 641 (1936).

of special tribunals to assist in such adjustments if private negotiations fail. The various laws dealing with this matter have naturally not been identical in their details. As one means of carrying out the basic purpose of the legislation has been found ineffective, another has been submitted. But the purpose has been steadfast, nor has the general plan for carrying it into effect been fundamentally changed. This general pattern, running as it does through a whole series of legislative enactments, constitutes a valuable addition to the experience upon which the Congress may draw for workable information for future legislation.

The procedure of the Mediation Board in time of strike. When the issues are very important the employees, by ballot taken by their labor organization, decide whether they will withdraw their services or not. If they vote to strike and there is danger of a serious interruption of commerce, the Railway Labor Act provides another effort to settle the controversy by peaceable means. The National Mediation Board is authorized to notify the President of the threatened strike. The President may then appoint an emergency board to investigate the issues in the dispute and to submit a report within thirty days. From the creation of such a board, and for thirty days after it submits the report, the *status quo* must be maintained and the strike is suspended. With rare exceptions, the recommendations contained in the reports of such emergency boards have served as the basis for peaceful settlements of such controversies.

The National Railroad Adjustment Board. Of all the schemes for preventing labor strife, the Railway Labor Act would seem to be the most adequate. It offers a complete system of conciliation, mediation, arbitration and emergency action for the adjustment of all manner of labor disputes, and it has demonstrated its effectiveness since 1923. With the amendment of the Railway Labor Act in 1934, creating the National Railroad Adjustment Board, the last gap in the system was closed. This Board, composed of an equal number of repre-

representatives of carriers and labor organizations, has the responsibility to decide all disputes arising out of interpretations or application of agreements. If the members of the Board should deadlock and not agree on an award, they then attempt to agree on a referee. If unable to do so, the Mediation Board appoints the referee, (Sec. 3(1) of Act amended in 1934).

An effort to prevent disputes. There can of course be no absolute guarantee against strikes. But the statutory plan for railway disputes makes provision for preventive action by attending to disputes before they break out in strikes, whereas the mediation activities of the United States Conciliation Service take place usually after the strikes have occurred. An example of the latter is the President's intervention in June, 1936, in the widespread steel strike. Here the commission was appointed under the United States Conciliation Service after some two months of labor difficulties with more than 150,000 men off the job. In this sense, too, the Conciliation Service of the Department of Labor may be said to be a strike settlement agency as distinguished from the mediation and arbitration agencies established by the Railway Labor Act for the avoidance of strikes. When labor disputes of major importance exist in mining, shipping, motors, steel, and other industries, it would seem that the government can no longer rely on unofficial conferences for their settlement. The procedures and experience of the Railway Labor Acts may indicate the type of mediation and arbitration agencies with clearly defined policies and procedures that should be provided for all industries not covered by the Railway Labor Act. Industry and labor need a policy, worked out by all the interested parties and supervised by permanent boards backed by the government with all the economic and social facts at hand.

All federal railway labor legislation has been an effort on the part of the government to prevent labor disputes that might paralyze transportation. The amended Railway Labor Act of

1934 is but the latest effort. It provides for long and varied negotiations looking to a settlement.

To change an existing employer-employee relationship, one side must give the other thirty days' notice. They must come together in search of agreement. If they fail in this attempt, the National Mediation Board of three members steps in. Should the Board also fail at mediation, it then attempts to bring about arbitration. Under Section 10 of the Act, as a final resort, the President may appoint an emergency fact-finding commission, its recommendations to be made within thirty days from appointment. Then for another thirty days after the report, while a solution is being attempted, neither the roads nor their workers may change "the conditions out of which the dispute arose."

The carriers announce a 15 per cent cut in wages. Recently the complete machinery was tried out. The railroads due to financial conditions announced a 15 per cent wage cut on May 12, 1938, to become effective on July 12. On July 18 the unions refused to accept the wage cut, and negotiations between the management and the unions began. The unions and management failed to agree, and the National Mediation Board took up the dispute. On August 31 the Board announced that mediation had failed, that the unions had refused to submit the wage cut to arbitration but that the management was ready to do so. Under the existing law the wage cut cannot be made effective nor can the union strike until thirty days after the last resort has been tried. This provided the most crucial test to which the Railway Labor Act has been subjected since its enactment in 1926.

Until this dispute in 1938 the most important railway labor controversies have resulted in increased wages. The outstanding exception was the deduction of 10 per cent of wages provided by an agreement reached in 1932.³¹ This deduction was re-

³¹ The 1932 deduction was brought about without recourse to the provisions of the law.

stored, and in the fall of 1937 the wages of unionized employees were raised about 7 per cent above the wages in 1929.

The unions refuse to arbitrate. The controversy was carried on entirely through the medium provided by the law, and unions utilized the law to the utmost. Thus, after mediation failed in the contest, the unions rejected arbitration and threatened to strike. Under the law this automatically opens the way for the appointment of a fact-finding commission by the President. The management made a test of the law to determine whether it is a "one-way" statute or whether it would permit a reduction of wages at a time of declining revenues. The President appointed, under the National Railway Labor Act, a special three-man fact-finding board. This action again automatically postponed the strike for another thirty days. After the board makes its report, the President has an additional thirty days in which to consider the report and make his findings.

Composition of the fact-finding Board. The President appointed to this board Chief Justice Walter P. Stacy of the Supreme Court of North Carolina; James M. Landis, Dean of the Harvard Law School; Harry A. Millis, Professor of Economics of the University of Chicago. This commission made a capable and impartial investigation of the whole railway situation, including the carriers' demand for a 15 per cent wage cut.

Conclusions reached by the Board. This fact-finding board, after almost thirty days of investigation presented President Roosevelt with the following conclusions:

1. The wages of railway labor are not high even as compared with wages in other comparable industries.
2. A horizontal reduction in the railroad industry would run counter to the trend of wage rates in industry generally.
3. The financial distress of the carriers which has obtained since 1937 is as yet a short-term situation. As such it cannot be regarded as ground for a wage reduction, especially

in view of present indications for an improvement in the business of the carriers.

4. In the light of these findings, the board concluded that the proposal of the carriers for a reduction of the wages of railway labor should not be pressed and recommended that the carriers withdraw and cancel the notices which would put such a reduction into operation.

With this report the emergency fact-finding board which had also sought unsuccessfully to mediate the dispute, passed out of existence, leaving the next step in the controversy up to the carriers, the unions and the President.

Recommendations of the Board not binding. Under the Railway Labor Act the fact-finding board's recommendations are not binding on the parties; usually they serve as a focal point behind which public opinion presses for acceptance by the contending parties. In this respect it is exactly like the Canadian Industrial Disputes Act.³² The railroads might have put a wage reduction into effect after a thirty days' breathing period had they wished to do so. In that case the unions could have carried through their strike threat which created the emergency.

Social consequences of the report. The refusal of the emergency board to support the carriers' contention will have important social consequences. A wage cut by the carriers would have stimulated the movement for similar reduction in the steel, automobile, rubber and other industries.

The chairman of the board explained that the board had been asked to sanction a wage reduction in the pay of non-operating employees as well as operating employees and that the wages of the former were low compared with the other. At the same time the chairman added, "it was apparent that the proposed wage reduction would be of little aid to the roads in distress while the roads that were well off would benefit."

The "root" of the wage proposal was that more than half of the \$250,000,000 savings would go to roads "whose claim

³² See Chapter IV, *supra*.

to present acute distress is not easy to sustain," and that 36.9 per cent of the savings would go to eight roads that are "hardly entitled to consider themselves in acute distress."³³

Source and conflict of data that came before the Board. Much conflicting testimony and information came before the board. The management's figures are based upon Interstate Commerce Commission reports showing employment at the middle of the month. The union argument is based on the figures prepared for the first time by the Railroad Retirement Board covering the income of every wage-earner on the roads for every hour he was employed.

Excluding executives, officials and staff assistants, the roads say, the average hourly earnings of rail employees in the first three months of 1938 was 77.7 cents, the highest wage on record. This is disputed by the unions, which claim the average hourly wage in June 1938, was 72.1 cents an hour, an increase of 1 cent in eighteen years. The carriers assert that the increase in that time was 11 cents.

The managements contend that wages are such a large part of the industry's costs that a wage reduction would be of enormous benefit to them at this time. The unions hold that wages have never been a drain on the industry and that they have been a decreasing factor since 1920, when 56.4 cents of every railroad dollar went for wages as compared to 46 cents in 1937.

Maintaining that the men have made many sacrifices, the unions say that the number of employees manning the roads is 55 per cent of the number employed in 1920, a drop of approximately 1,000,000 men. Of those employed only some 53 per cent, they say, have full-time employment.

The management contention is that with decreased business fewer employees are necessary and that engineering and

³³ The seventy-five page document was printed by the U. S. Government Printing Office. A limited number of copies are at the U. S. Department of Labor and the National Mediation Board.

mechanical improvements account for greater efficiency and productivity per man.

The unions assert that the part played by employees in increasing efficiency cannot be discounted and offer figures to prove that not only have improved mechanical advances worked many men out of jobs but that the roads are now receiving 88 per cent more work per employee hour, and 92 per cent more work per dollar of wages than they did in 1920.

The report accepted by the carriers. As was pointed out above, under the Railway Labor Act neither the carriers nor the employees were compelled to accept the report of the federal fact-finding board. However, the carriers did accept the recommendations of the board, and withdrew their proposed 15 per cent reduction in wages. The carriers accepted the board's proposal "not because they agreed to it, but because they desired to cooperate" and get cooperation for a broader program through legislation helping both the carriers and their employees. Both sides have formulated a program. The railroads have proposed the following program for immediate action:

(1) Revision of the I.C.C.'s rate-making rule to give primary consideration to the railroads' revenue needs and to employ as a rate base a figure that can be definitely ascertained.

(2) Revision of the R.F.C. law so that loans may be permitted upon prospect of future earnings.

(3) Discontinuance of government barge lines.

(4) Repeal of the land-grant statutes favoring the government in the fixing of rates.

(5) Regulation of water transportation by the I.C.C.

(6) Repeal of the long-and-short-haul clause of the Commerce Act.

Program proposed by the unions for the future. The railway unions offer this program:

(1) The placing of all forms of transportation under the eyes of a single federal agency.

(2) Adoption of a new method of service by the operation of speedy, lightweight equipment which would make possible more units of transportation "to move when the public wants to move."

(3) Authority to the I.C.C. to fix a base rate that would work in prosperous as well as in lean times and would make it possible for the roads to create adequate reserves in liquid assets, equivalent to three times the annual fixed charges, before being permitted to pay dividends. The dividends themselves would be held to a reasonable figure.

(4) Consolidation of railroads, voluntary at first, but compulsory after a probationary period of ten years.

This process of adjustment demonstrates how legislation for settling industrial disputes might be drafted, creating agencies to function in other industries.

CHAPTER VI

THE GOVERNMENT AND INDUSTRIAL DISPUTES IN COAL

THE next three chapters, dealing rather exhaustively with coal, steel, and the railway industry, are of importance because they bring out not only the history of labor disputes in three of our great industries, but also the evolution of government intervention in these industries. Such industries are known as "key" industries, and when their operations are interfered with many other businesses are also affected. This situation probably in part accounts for the government's early intervention through legislation and commissions to regulate labor disputes in these industries. In coal and steel is demonstrated the long history and struggle for collective bargaining; whereas in the railway industry we have the development and successful application of legislation as a means of settling industrial disputes.

Geographical concentration of coal. Industrial relations in the anthracite coal industry are somewhat unique for a number of reasons. In the first place, the industry is geographically concentrated in a small area of a single state. Practically all of the anthracite coal in the United States is found in northeastern Pennsylvania, covering an area of 484 square miles in three limited and substantially parallel deposits, located in valleys which are separated by mountainous country. For trade purposes this coal area is divided into three fields: the one farthest north, or the Wyoming field, is estimated to contain about 176 square miles of coal beds; the central, or the Middle or Lehigh field, is estimated to contain about 45 square miles; and the one farthest south, or the Schuylkill field, is estimated to contain about 263 square miles of coal.¹

¹ Jones, Elliot, *The Anthracite Coal Combination in the U. S.* (1914), p. 506.

Effect of concentration upon control. This geographic concentration has resulted in a high concentration of control. The anthracite fields have for many years been the scene of attempts at combination, particularly between the carriers of coal and the coal operators.² Since 1898, however, there has been in existence an effective anthracite combination which has virtual control of the coal lands, coal mines, and coal-carrying railroads. By far the largest part of the coal deposits is owned or controlled by the anthracite railroad companies or their affiliated mining companies. There are ten "railroad companies," operating in these fields.³

Railway companies and coal production. These railroad coal companies, when taken together, not only own over 90 per cent of the available coal in the ground but also operate on a large scale. They produce 75 to 80 per cent of the total out-

² *Ibid.*, pp. 20-59.

³ *Report of the Federal Trade Commission on Anthracite and Bituminous Coal* (1917), p. 49:

<i>Railroad Companies</i>	<i>Anthracite-Producing Companies</i>
Delaware and Hudson Co.	Delaware and Hudson Co. Hudson Coal Co.
Delaware, Lackawanna and Western Railroad Co.	Delaware, Lackawanna and Western
Erie Railroad Co. (also controlling New York, Susquehanna and Western Railroad Co.)	Pennsylvania Coal Co. Hillside Coal and Iron Co.
Lehigh and New England Railroad Co.	Lehigh Coal and Navigation Co.
Lehigh Valley Railroad Co.	Lehigh Valley Coal Co. Coxe Bros. and Co., Inc. Scranton Coal Co.
New York, Ontario, and Western Railway Co.	
Pennsylvania Railroad Co. (also leasing Northern Central Railway)	Susquehanna Coal Co.
Reading Co. (also controlling Philadelphia and Reading Railway Co. and the Central Railroad Co. of New Jersey)	Philadelphia and Reading Coal and Iron Co. Lehigh and Wilkes-Barre Coal Co.

put. Of the total annual production, amounting on the average to more than 88,000,000 net tons for the ten-year period from 1914 to 1923, over 70 per cent is produced by eight large companies which are known in the trade as "railroad companies,"⁴ because they were formerly owned by, and still are more or less closely affiliated in economic interests with the railroads tapping the anthracite territory. The output of these companies is usually designated as "company coal," "most of it from their own lands and only a little on a royalty basis; selling most of their products to retailers and individual consumers; at constantly rising prices which were formerly uniform, agreed upon in advance, and which even now do not vary more than 5 per cent one from another."⁵

Independent operators and coal. The remaining 10 per cent of the anthracite reserves which is not in the hands of the coal companies is owned by the independent operating companies, and partly by non-operating corporations, estates, and individuals. The recent consolidation policy, however, has resulted in the practical elimination of the independent operators as factors of any importance in the control of the anthracite coal trade. The elimination has been effected in two ways: first, by purchase; second, by means of the percentage contracts.⁶

Control of anthracite. In this way the "anthracite combination" determines conditions in the anthracite industry. It is described by one authority as follows: "Occupying the center of the stage of the anthracite industry is a mighty though incorporeal figure—a composite of financiers, owners, operators, and railroads—known as the 'anthracite combination.' Historically and actually it is a conspicuous character with more than a cat's nine lives, with an economic soul which

⁴ *Report of the Federal Trade Commission on Premium Prices of Anthracite* (1925), p. 9.

⁵ Devine, Edward T., *Coal*, p. 79.

⁶ Jones, Elliot, *op. cit.*, pp. 73-97.

survives legal sentence of death and dissolution, with ample vocal facilities for declaring its own non-existence, with a benign aspect to the legislators, prosecuting officials, radical editors and justices of the Supreme Court—a puzzle, a tradition, a fact.”⁷

The central fact is that ownership, operation, and transportation of a large part of this natural monopoly is concentrated in a few powerful companies who determine conditions in the industry, are aware of their community of interests, and are coordinated by fiscal agents. Practically all the anthracite coal that is mined is controlled by the anthracite-carrying railroads through their coal companies. These railroads are clearly working in harmony with each other. The wholesale price of coal at tidewater is fixed by what, for practical purposes, is a combination of coal companies, and the power of this combination to fix prices is not limited by any fear of combination nor to any considerable extent by the danger of losing its market through the use of substitutes. In 1900, the combination fixed a materially higher price for anthracite coal—a price which has been steadily maintained or increased.⁸

Efforts of the government to intervene. Numerous unsuccessful attempts have been made to dissolve this combination. As a result of the various efforts of the government to restore competitive conditions in the anthracite industry, it is possible to say that the situation is substantially improved in several respects over that prevailing fifteen to twenty years ago. At the same time it is also possible to agree with the United States Coal Commission of 1923 that the separation of interest between some of the railroad companies and some of the coal mining business is by no means complete, and that “the fact of an economic concert amounting to combination is established beyond a reasonable doubt.”⁹ There is no formal

⁷ Devine, Edward T., *op. cit.*, p. 54.

⁸ Jones, *op. cit.*, p. 180.

⁹ *Annals of the American Academy of Political and Social Science* (1924), “The Price of Coal,” p. 162.

organization of the anthracite coal operators. They need none. The "railroad" operators are so closely associated that "they act like a biological integer," and "have a sort of organic unity, the natural outgrowth of years of participation in a stabilized industry, concentrated both geographically and in the number of enterprises engaged in it."¹⁰ For negotiations with the United Mine Workers, there is a permanent body representing both the "railroad companies" and the "independents," called the General Policies Committee, and this committee on occasion acts for the operators.

Miners of anthracite. The problem of labor in the anthracite industry is to oppose the anthracite combination and the financial monopoly of the railroad companies. The miners, about 147,500 men and boys, constitute the labor force in the industry. They work in the coal mines; cut out the coal with machine or pick; blast it down; load it on mine cars; hoist, clean, sort, and start it on its way by rail or truck or barge; lay the tracks and keep them in order; direct the currents for ventilation; man the pumps; fire the boilers; run the cages up and down the shafts; and do many other necessary things.¹¹ Most of them are men at the height of their physical vigor, though there are many boy workers under twenty, employed because of the work they can do on the breakers. Of the 147,500 anthracite workers, 78,000, or about 50 per cent, are foreign born.¹² They are not, however, a body of recent immigrants. Most of them came to America before the World War; and half of them, when the census was taken in 1920, had been here fifteen years or more.¹³ According to the U. S. Coal Commission's report, over 29 per cent could neither read or write any language; and 14 per cent of those coming from non-English-speaking countries do not speak English.

¹⁰ Devine, *op. cit.*, p. 52.

¹¹ Devine, *op. cit.*, pp. 31-32.

¹² *Report of the U. S. Coal Commission of 1923, 1925, Part I*, p. 10.

¹³ *Ibid.*, p. 11.

Although less than 15,000 of the foreign-born had been in this country under ten years in 1920, more than 34,000, or 44 per cent, were still alien in that year. Less than a thousand of these were under 18 years of age, the age at which first papers can be taken. An additional 10,500 of the foreign-born had taken out first papers only, so that less than half of all the anthracite mine-workers born overseas were American citizens in 1920.¹⁴ The anthracite workers and their households together number approximately half a million persons, or nearly one-half of the population of the counties in which the coal fields lie. They live in the small, compact anthracite coal fields, where the communities, large and small, lie like a string of beads between ranges of low mountains around the foothills and along the streams.¹⁵ Railways, trolleys, good roads, inter-urban telephone connections creating and maintaining intercourse are the cords which bind these communities together. The small, isolated mining community, located on the company property, unincorporated, company-controlled, and not easily accessible by trolleys, is exceptional in the anthracite field. About 70 per cent of the mine workers live in incorporated towns and cities with a population of 2,500 or over; the great majority of the others are in unincorporated but independent communities of 500 to 2,500 persons.¹⁶ Although 98 company-controlled communities are reported, less than 15,000 mine workers were living in these communities. Besides, comparatively few of the mine workers lived in company-owned houses,¹⁷ and nearly nine-tenths of the small proportion who did live in such dwellings were in houses that are either located within the limits of incorporated towns or are not as much as five miles from such towns. The company-owned houses do not constitute more than 5 per cent of the family dwellings in the communities in which such company-houses are located. Thus more than 90

¹⁴ *Ibid.*, p. 11; Part II, p. 535.

¹⁵ Hunt, Tryon W., *What the Coal Commission Found* (1925), p. 295.

¹⁶ *Report of the U. S. Coal Commission of 1923, 1925*, Part I, p. 10.

¹⁷ Hunt, Tryon W., *op. cit.*, p. 295.

per cent of the mine workers live in houses not owned by the coal companies and in communities that are independent of the employing companies. "They live just as the mass of other Americans live—in free, self-governing communities where their civic rights are within their own keeping."¹⁸ About 57 per cent of the mine workers maintain homes in the anthracite region. Over 68 per cent of the foreign-born and 44 per cent of the native-born maintain homes. Of the total mine workers who maintain homes, over 32 per cent own their homes. Over 34 per cent of the foreign-born own in part or in whole the houses in which they live, as compared with less than 29 per cent of the native-born. The mine workers are married men for the most part and have larger families than men in any other occupation.¹⁹

The miners and their unions. The anthracite coal miners have the reputation of making good union members. This reputation, however, was built "by slow upbuilding forces acting upon vast bodies of men and giving to them increased confidence and increased sense of solidarity and brotherliness."²⁰ As late as 1899, the idea of organizing the anthracite miners was scouted by all but a few of the leaders of the United Mine Workers.²¹ During the period prior to 1899, no organization of the anthracite miners had been of sufficient strength to influence to any permanent degree their conditions of work. Many attempts had been made to form unions of mine workers, but, either through internal jealousies or because of the hostility of the operators, these attempts were doomed to failure. These spasmodic and for the most part ineffective attempts left the mine workers more completely subject to their employers, so that in 1899 the difficulties in the way of organizing the miners appeared insurmountable. In addition to the old pro-

¹⁸ *Ibid.*, p. 9.

¹⁹ Hunt, Tryon W., *op. cit.*, pp. 11-13, 296-7; Devine, Edward T., *op. cit.*, pp. 34-35.

²⁰ Mitchell, John, *Organized Labor*, p. 355.

²¹ *Ibid.*, p. 362.

blems of internal jealousies and uncompromising hostility of the operators toward any form of labor organization, there were now the increased "difference in race, religion, and ideals of twenty nationalities in the region; the variations in the standard of living; the mutual distrust among the races;"²² and many other factors operating against an effective labor union in the anthracite industry. The United Mine Workers of America, nevertheless, undertook to organize the anthracite mine workers in 1899. Within one year everything had changed and the anthracite miners had won the greatest victory ever secured in the twenty-five years of mining in that region. As a result of this and succeeding victories, the anthracite miners are now very well organized.²³ Undoubtedly, an additional factor making for a strong labor organization in the anthracite industry is the fact that the labor force of the region as a whole is relatively stable as compared with industrial establishments in cities. Even when mines close for a considerable period, it is usual to open again with substantially the same force.²⁴ Less movement is to be expected, of course, for anthracite mining is a relatively specialized occupation. Moreover, it is not so simple a matter for a man to throw up his job and find a new one when he is working in a small town or county district, where there is no choice of occupation and where a change means moving his family.²⁵ The most important thing shown by the study of labor turnover is that it is not particularly excessive. Figures show that the outside day-men are the most stable group in the anthracite mines. The contract miners and inside day-men are not far below them. The greatest turnover takes place among the miners' laborers, the men who are the personal assistants of the contract miners, hired and fired by them individually and not by the company.²⁶ On the whole, the relative

²² Mitchell, *op. cit.*, p. 62.

²³ Devine, *op. cit.*, p. 118.

²⁴ Hunt, *op. cit.*, p. 194.

²⁵ Devine, *op. cit.*, p. 126.

²⁶ For a detailed study of labor turnover in the anthracite industry, see the *Report of the U. S. Coal Commission of 1923, 1925*, Part II, pp. 501-526.

stability of the labor force in the anthracite industry is one of the factors making for a strong labor organization in that field.

The ability and the willingness of the immigrant labor in the anthracite field to organize and resort to collective action is to be considered as another factor in the creation of a strong union. Prophets had predicted that it would be impossible to bring the fourteen or sixteen nationalities into line to effect a labor union of any importance.

The importation of foreign labor. It was the anthracite coal operators who first brought the Slavs and the Italians to the coal fields to break the power of Anglo-Saxon labor. There was a superabundance of labor throughout the anthracite region;²⁷ the newcomers had a lower standard of living, were willing to work for less wages, and stood ready to support the unskilled, and rapidly to acquire the places of the skilled men. Thus the forces of concentrated wealth and immigration broke up unionism in the seventies and eighties, and we hear of no further attempts to unite for better working conditions until 1900. But soon adverse working conditions forced the recognition of a common lot and made the many nationalities with different languages, customs, and ideals receptive to the teachings of the United Mine Workers. These foreigners proved capable of forming labor organizations which are more compact and united than any which ever existed among the various English-speaking nationalities who first constituted these communities. "It is considered by men intimate with the situation throughout the coal fields during the last strike (1900) that its universality was more due to the Slav than to any other nationality. There would have been, in all probability, a break in the ranks of the Schuylkill mines had it not been for the firm and uncompromising attitude of the Slavs in favor of the strike. They have been trained to obedience, and when they organize they prove a unanimity that is very seldom seen among na-

²⁷ *Report on Labor Troubles in the Anthracite Regions* (1887), p. viii.

tives who pride themselves on personal liberty and free discussion." ²⁸

Miners petition to call a strike. The United Mine Workers of the bituminous field had felt the effects of anthracite coming into their markets during the early struggles and, without doubt, this was one compelling force which drove them to organize the anthracite miners. In 1899 national organizers and members of the executive board were permanently stationed in the anthracite field, and the region was organized into three districts—numbers 1, 7, and 9—with regular local officials to direct the work. In spite of this well-laid campaign, only 8,000 out of the 142,000 workers were brought into the organization before the strike.²⁹ The pressure of adverse working conditions, nevertheless, compelled the miners of the northern field in 1900 to petition President Mitchell of the United Mine Workers to call a strike. The miners, having no voice in the sliding scale, had lost all confidence in its justice and they demanded its abolition. Demands were made for a reduction in the price of powder and an increase in money wages, since the existence of the company store, deductions for the company doctor, and other factors had affected real wages.³⁰ After conferring with the leaders of the other districts, President Mitchell decided that the time was not opportune, but a convention of delegates from all other districts was called on August 15, 1900, to consider the matter. The convention met at Hazleton, formulated a list of twelve grievances, and by circular letters invited the operators to meet the representatives of the miners in joint conference on August 27 to "discuss amicably and adjust grievances."³¹ The operators

²⁸ Roberts, Peter, *Anthracite Coal Industry* (1904), p. 172.

²⁹ Mitchell, John, "The Great Coal Strike," published in *The Independent*, Vol. 52, p. 2614.

³⁰ Suffern, A. E., *Conciliation and Arbitration in the Coal Industry of America*, pp. 241-242. Mitchell, *op. cit.*, p. 2614: one firm is quoted as making \$16,000 profit a year through deduction for the company doctor.

³¹ Roberts, *op. cit.*, pp. 183-184.

paid no attention to this request. They refused to recognize the United Mine Workers as an organization, claiming that it was a bituminous organization whose officers were not acquainted with the anthracite industry and whose superior numbers should not be allowed to control anthracite policy.³² They thought that not more than 10 per cent of the men would respond to a strike order. From the time of the convention until September 12 every honorable means, including an offer to arbitrate, was used to effect a settlement. President Mitchell pointed out to the operators that the anthracite group had become numerically stronger than the bituminous group, and further offered to let negotiations take place between the operators and committees of their own men, provided they met in the same city at the same time so that general conditions could be established.³³ The operators did not take advantage of any such arrangement. Consequently a strike was called on September 17, and in two weeks 99 per cent of the 144,000 workers were out, although at this time the membership of the unions was about 8,000.³⁴

The hearing of the U. S. Coal Commission for the wage contract of 1922. The wage contract of 1922 was entered into following hearings; and an award by the United States Coal Commission appointed by President Wilson, was limited by its terms to the period ending March 31, 1922. On March 15, 1922, the anthracite operators and representatives of the United Mine Workers of America in the anthracite region met in joint session for the purpose of negotiating a new agreement to be effective April 1. The miners demanded, among other things, an increase in wages of 20 per cent on tonnage rates and \$1.00 more per day for day workers, time-and-a-half for overtime and double time for Sundays and holidays, the eight-hour day for all

³² Suffern, *op. cit.*, p. 243.

³³ *United Mine Workers' Journal*, Sept. 27, 1900.

³⁴ On Sept. 17, the day the strike went into effect, 112,000 employees struck, and at the time of the settlement, Oct. 29, 140,000 men were idle; Suffern, *op. cit.*, p. 243.

classes of labor in the industry, and the check-off.³⁵ The operators considered the demands of the miners unwarranted, and in their reply stated that "the economic situation not only forbids any increase in costs and prices but compels a reduction."³⁶ They proposed an 18 per cent reduction in tonnage rates and \$1.20 reduction in day rates for men, \$.72 for boys—an average decrease in wages of about 21 per cent. They said that prices for anthracite were already too high. Labor cost, which they claimed was about 70 per cent of the cost of production, had increased from \$1.59 per ton in 1913 to \$4.04 in 1921, an increase of 154 per cent. The further increases asked by the miners, they estimated, would add \$170,000,000 to the nation's anthracite bill, or \$3.00 per ton.

Wages and cost of living. They presented, on the other hand, the figures of the United States Bureau of Labor showing that the cost of living between 1920 and 1921 had fallen about 20 per cent in the country at large and 16.5 per cent in the anthracite region. Prices and wages had been deflated in other industries and the miners must therefore expect a reduction instead of an increase in wages.³⁷ To avoid further suspensions, the operators advocated a five-year contract which should be subject to "annual adjustments as to wage rates only." These adjustments should be made by the joint committee of miners and operators. In case they could not agree, the dispute should go to the board of arbitration composed of three representatives of the public and one each for the miners and the operators. If an award was not made before April 1, work should be continued and the decision would be considered retroactive.³⁸

³⁵ "The Anthracite Strike of 1922," Bulletin, *Anthracite Bureau of Information*, pp. 5-6.

³⁶ *Ibid.*, p. 8.

³⁷ *Anthracite Bureau of Information*, *op. cit.*, pp. 7-8, 10-15; Suffern, Arthur E., *The Coal Miners' Struggle for Industrial Status*, pp. 62-70.

³⁸ *Anthracite Bureau of Information*, *op. cit.*, pp. 19-21.

Miners refuse to accept proposals of the operators. The miners refused to accept either the wage reduction offer or the arbitration proposal of the operators. They were in complete accord with the operators in their acknowledgment that prices of anthracite coal were excessive and unwarranted. They believed that in the interest of the consumer as well as the industry itself, the prices of coal should be reduced; but they did not believe that prices were dependent upon wages or that reduced rates of pay should be made the condition of lower fuel cost to the consumer. They maintained that there were other factors affecting prices which were more fundamental. Excessive freight rates charged by the anthracite coal-carrying railroads; the profits of unnecessary coal sales and other distributing agencies; and the royalties paid to the holders of coal lands by the independents and other operators were, the miners contended, the real causes of the high retail prices of anthracite coal. If these unwarranted and indefensible exactions were reduced to their proper proportions as in the case of the freight rates, or entirely removed as in the case of concealed profits, the consumer of coal could purchase his fuel cheaper by at least five dollars a ton.

Proposal of the miners' joint sub-committee for price reduction. With these facts in mind, representatives of the miners on the joint sub-committee presented a resolution setting forth that coal prices were too high, and proposing: first, that the Interstate Commerce Commission be invited to investigate anthracite freight rates with a view to ordering a reduction if they were found too high; and second, that the Federal Trade Commission be invited to investigate all agencies "which have been established for the handling and sale of anthracite coal, extending from the miners to the consumers, with the end in view of recommending measures of relief from unwarranted costs and profits."³⁹ The representatives of the operators refused to consider this method of reducing prices. They held

³⁹ *Ibid.*, p. 16.

that their authority extended only to the consideration of wages and that prices and profits were beyond the range of the conference. They declared further that freight rate reductions had been sought from the Interstate Commerce Commission already and that a decision would probably soon be reached by that body, but upon investigation it was discovered that eighty-seven independent operators, producing only 25 per cent of the supply of anthracite coal, had taken such action; and that none of the larger companies, producing 86 per cent of the supply, were asking for freight reductions. Thus the conferences between the miners and the operators appeared to be at a deadlock, with neither party conceding in the least to the demands of the other. Although the operators proposed the appointment of a presidential commission to investigate and pass arbitration and judgment upon wages and working conditions, the miners were obdurate about placing their case in the hands of boards of arbitration or commissions where "disinterested citizens" would have the deciding vote.⁴⁰ They refused to assume that labor in the anthracite region is a commodity, the price of which should be determined by the same forces which influence the value of other commodities. They said they could not agree to a proposition which restricted the inquiry of a commission to the cost of living, nor did they admit that this element should be a subject for discussion. They cited the Railway Labor Board and the boards under the Canadian Industrial Disputes Act as instances of the failure of bodies operating upon the theory of placing the final power in the hands of "disinterested citizens."⁴¹

The strike of 1922. The strike which started in the form of a general suspension of mining operations on April 1, 1922, was prolonged into the summer, and from April 1 to September 11 not a ton of anthracite was mined. Representatives of the federal government and mayors of the various cities in the

⁴⁰ *Minutes of the Meeting of the Public Committee on Coal*, pp. 38-44.

⁴¹ Suffern, *op. cit.*, p. 120.

anthracite region attempted to formulate plans that would bring about a settlement.⁴² On July 1 the President called the operators and representatives of the miners to the White House. His overtures were accepted by the operators, but the miners turned them down. It was suspected by the operators that President Lewis was holding off for a compromise in the anthracite field until the larger fight had been settled. In a message to Congress, President Harding was compelled to admit that the country was at the mercy of the United Mine Workers of America.

Truce reached continuing the agreement of March 31. Finally, a proposal was made which was accepted by both sides and which served as an agreement to be in effect until August 31, 1923. Thus a truce was brought about, continuing the agreement that had expired March 31, and providing for a request to Congress for an investigating commission regarding the industry. The contract of 1920-22 was to remain in force, which meant that the miners had thwarted the attempt to deflate wages. Production was to start at once, and the continuance of production after August 31 was to be upon "such terms as the parties may agree upon in the light of the report of the commission." Both the miners and the operators joined in a request to Congress that a separate fact-finding anthracite coal commission be created to investigate and report on every phase of the industry.⁴³ This truce was signed September 3, and on the eleventh the miners went back to work.

Cost in dollars to workers, public, and operators. It is estimated that the strike deprived the public of 30,000,000 tons of anthracite; it cost the miners \$143,000,000 in lost wages;

42 Mumford, J. K., *Anthracite*, 1925, p. 117.

43 Suffern, *op. cit.*, p. 120: "The United States Coal Commission was duly appointed. It reported at length, but found virtually nothing that was not already known as a result of the seven or eight previous investigations. The indifference to this and other problems of the Industry causes wonder as to whether the public wants to know the truth about anthracite, or desires to have its preconceived notions confirmed."

and the operators paid out some \$30,000,000 for the maintenance of the properties.⁴⁴

Expiration of the 1923 agreement and demands made in the new.

As the agreement of 1923 covering wages and working conditions in the anthracite mines expired by limitation at midnight August 31, 1925, arrangements for a joint conference between the anthracite operators and the United Mine Workers of America to discuss a new agreement were made nearly two months ahead of time. At the opening meeting of the joint conference, the miners demanded complete recognition of the United Mine Workers of America, a 10 per cent increase of piece rates and one dollar per day for those employed by the day, a five-day work week, the check-off union dues, and improvement of living conditions.⁴⁵ The operators refused to tax production and, therefore, the price. They claimed that the realities of the situation required, on the contrary, a reduction in labor costs either "by a reduction of existing wage scales or by increasing the productivity of the worker with the retention of the same wage scale." They claimed that "seventy-five cents out of every dollar received by us is paid to you for labor. The balance of twenty-five cents is a narrow margin out of which to meet charges for material, machinery, taxes, insurance, and return on the investments." As to the demand for the full recognition of the union: "You already have full recognition in the sense in which recognition is generally defined throughout the trade union world. We negotiate with your union and contract with your union. By meeting with you here, we recognize your union. On the other hand, if this demand means the check-off, it seeks something not generally demanded or practiced by other unions. . . . Our opposition to the check-off is unabated." The operators denied the check-off on the grounds that the union should not be relieved of the "burden of collecting its

⁴⁴ Mumford, *op. cit.*, p. 118.

⁴⁵ Anthracite Bureau of Information, *op. cit.*, pp. 4-5.

own dues for its own war chest," and that it would result in a closed shop. They wished the miners to continue to work if a contract had not been made at the termination of the existing agreement, and "that if our respective committees are unable to agree upon any issues, such issues shall be referred to arbitration."⁴⁶

Miners lack confidence in public representatives. In reply to the request that all disputed points should be referred to arbitration, the miners stated that they had lost confidence in the impartiality of the public representatives as a result of the award of the Anthracite Commission of 1920. This happened for a substantial number of reasons, not the least one of which was the fact that they had had previous experience in arbitration proceedings with the anthracite operators. It cost the anthracite mine workers over a period of two years the goodly sum of sixty millions of dollars in wages to acquire the knowledge they now possessed concerning the anthracite operators' well-known policy of keeping close to an arbitrator. The anthracite mine workers wanted no repetition of such a situation.⁴⁷ From past experience, they were convinced that an agreement in advance to arbitrate disputed points cuts off the possibility of settlement by bargaining.

Arbitration wages and the price of coal. The miners agreed that if wages were to be arbitrated by public representatives, the prices of the operators should be fixed, the books of the operators should be opened, and what the industry can afford to pay should be known. They declared that the claims of the investors in the form of charges for depletion, interest, royalties, and profits were accelerating at an intolerable rate and that the salaries of executives, retinues of high-priced attorneys, multifarious publicity representatives, statistical and research

⁴⁶ *Ibid.*, pp. 6-9; Suffern, *op. cit.*, p. 123.

⁴⁷ *Anthracite Bureau of Information, op. cit.*, pp. 15-17; This reference was to the 1920 arbitration "when the final decision of the arbitration was changed between twilight and dawn."

organizations, and secret agents were incorrectly charged to production cost.⁴⁸

Operators offer to conciliate. During the strike the operators offered to submit "such books, records, and other information as may be considered pertinent to a board of arbitration," but they declared in advance that the regulation of their prices would be unconstitutional. They contended that an agreement to arbitrate furnishes incentive to both sides to moderate and compromise in their demands, and that they could take no more conciliatory attitude than to agree to let "representatives of the public fix the wages they shall pay." As the strike was prolonged, other points of issue receded into the background, and it developed into a contest of attrition over the question whether a settlement should include provision for compulsory arbitration. The miners, however, refused to barter away their right to strike for a "mess of pottage," and the operators insisted upon the arrangements "to break the strike habit."⁴⁹

The difficulties in anthracite and bituminous coal. The miners continued negotiations from July 9 to August 4 in the hope that the operators would recede from their position. On the latter date the joint conference adjourned *sine die*, subject to call from either side. The operators disclosed that "the reason why Mr. Lewis refused to discuss the anthracite situation on any reasonable basis, or to accept arbitration, was that union officials are naturally more concerned over the bituminous coal situation than difficulties regarding anthracite;" that in order to get out of a seeming impasse in the soft coal region, the union proposed to tie up the anthracite and keep it tied up until the federal government could be dragooned into interfering in a private soft coal wage contract.⁵⁰ No agreement

⁴⁸ *Ibid.*, p. 14: *United Mine Workers Journal*, August 15 and September 1; Suffern, *op. cit.*, p. 124.

⁴⁹ Suffern, *op. cit.*, pp. 124-125.

⁵⁰ *Anthracite Bureau of Information, op. cit.*, p. 18.

having been reached by August 31, the miners suspended work because they refused to "disarm themselves" by continuing to work while negotiations were going on.

Proposed plan by Governor Pinchot rejected by the operators.

As the strike was prolonged, citizens, clergymen, editors, and committees of business men called on both sides and urged speedy settlement. Governor Pinchot of Pennsylvania, who had successfully intervened in the 1923 strike, announced that he had requested both sides to visit him on separate days and go over the situation. He said that he merely wanted the facts because it was his duty as governor to know them, adding that it was "the right of the President of the United States to speak the first word." Governor Pinchot, seeing that President Coolidge was not anxious to intervene, finally proposed a plan of settlement which was accepted by the miners but rejected by the operators.⁵¹ Shortly after this, Congress convened in regular session, and President Coolidge appealed for authority to act. He discussed the subjects of coal and strikes in general and mentioned the anthracite situation, saying that "authority should be lodged with the President and the Departments of Commerce and Labor, giving them power to deal with the emergency." But just as the threat of intervention by the federal government seemed ready to materialize, the parties concerned reached a settlement on February 12, 1926, as a result of renewed negotiations between the union and the operators. Thus, the strike was settled within the industry, bringing to a close the most bitter struggle in the anthracite industry since collective bargaining was introduced. The strike lasted 170 days, the longest in the history of anthracite.

Terms of the agreement of 1928. According to the anthracite agreement of 1928, work was resumed under the terms of the expired contract, and the old scales of wages maintained until August 31, 1930, subject to modifications which follow.⁵² At

⁵¹ *Ibid.*, pp. 30-31.

⁵² *Ibid.*, pp. 47-48, for the agreement of 1926.

any time until after January 1, 1927, either side could make proposals for changes in the wage scale but not more often than once a year. A request for a change obligated the parties to meet in joint conference within fifteen days. If they failed to agree within thirty days after starting negotiations, all controversial issues were to be referred to a specially constituted board of two men with full power to make a settlement. Members of the board were to meet as advocates for each side and were obligated to reach an agreement within ninety days. To attain that end, they were given the power of enlarging the board to an odd number, in which case a majority vote would be considered binding. Arbitration of disputed points was to take place only in case they agreed on arbitration. It is this provision in the anthracite agreement of 1928 which furnished the basis of a claim of the miners that arbitration would be voluntary, if resorted to at all, because the agreement reads "may" rather than "shall."⁵³

The work of the Board of Conciliation. The demands of the miners and the operators on the question of cooperation and efficiency were referred to the Board of Conciliation to work out a reciprocal program of cooperation, harmony, and efficiency in the industry. The miners understood that the "reciprocal program" included the check-off in a limited form. The Board of Conciliation was also given the task of equalizing wages in accordance with the agreement of 1923, which evidently was not carried out prior to the agreement of 1926.

Except as modified by this agreement, the award of the Anthracite Coal Commission of 1902 and subsequent agreements, as well as the ruling and decisions of the Board of Conciliation, are ratified during the terms of the contract.

Bootleg coal and the problems back of it. We get another view of the same economic, legal, and social question when we analyze the illegal or "bootleg coal" mining. These illegal miners go a step further than the sit-down strikers. In the case

⁵³ Suffern, *op. cit.*, p. 126.

of the latter, the striker intends eventually to turn the property back to the owner; whereas in the case of the illegal miner, he has no notion of ever returning to the coal operators the coal mined or the profits therefrom.

There is no dispute on the legal standing of bootlegging. The bootleg miners legally are trespassers and are stealing property, and the bootleg breakers and truckers are handling stolen goods. But here, as in the case of the sit-down strikers, it is alleged that the right of human beings to live is superior to legal property right, strictly and legally construed.

Efforts to stop bootleg have failed. Efforts to stop bootlegging throughout most of the Pennsylvania fields by resort to the ordinary legal processes have thus far been almost wholly unsuccessful. The explanation of the breakdown of the legal process is, first, the fact that a majority of the communities affected and even the local judiciary have apparently been sympathetic to the bootlegger; and secondly, there has been the real threat of mass violence in certain cases.

It seems obvious that bootlegging cannot be allowed to continue, if our present concept of property and general economic system are to continue. Such a policy will impose large losses on the legal owners and operators; it will not, in the long run, help the bootleg miner; it will imperil the whole structure of law and order, not only in the region and industry of coal, but where taken up by other industries if and when the emergency arises.

The development of illegal mining. A brief history of the development of illegal mining, as well as the problems involved, might be considered for two reasons: (1) to point out the need to legislate for the elimination of the present evils; and (2) to forestall the possibility of the practice spreading to other industries. For example, it would be but a step for "sit-down" strikers to take over and begin running their employers' machinery and selling the finished product.

Illegal or "bootleg" mining is not an altogether new occurrence in the state of Pennsylvania. The practice of poaching, as it is more commonly known, started from the companies' toleration of the practice of miners in digging on their property coal which they needed to heat their homes. The maturation of this process into a rival "industry," however, came as a result of the depression.⁵⁴ Unable to obtain a distribution of work, the miners began to sell this coal. Soon they found that there was a ready market for it; and because of the lower cost per ton, the public took to the commodity at an alarming rate. The demand grew bigger. The truckers with commercial loads began to pick up coal "on speculation." Soon after this, a more definite relationship between the truckers and the bootleggers took place; an alliance was formed. Outside capital was invested in larger breakers and fleets of trucks and the business developed into a major industry.

Illegal coal v. a legitimate market. The threat of illegally mined coal upon the market of legitimate coal was first felt by the operators when, in December, 1932, the Glen Alden Coal Company and the Lehigh Valley Coal Corporation announced unexpectedly a cut of forty cents per ton in the price of anthracite, in order to meet the competition of bootleg coal.

The incumbent administration in Pennsylvania at the time was ill-disposed to act upon the problem in spite of the many deputations and demands by the combined representations of the coal operators and retailers. Happily for the operators, bootleg operations had not reached the maximum point of production, but every depression of the market of legitimate coal meant an increase of the illegitimate. The ailing anthracite industry was therefore passed over to another administration, which was committed to giving Pennsylvania a "New Deal."

At first, until local officials demanded his aid, Governor George H. Earle was not inclined to act upon the suggestion of the operators that he send the state militia to protect pro-

⁵⁴ Lebow, Sylvan, "Bootleg Coal," *Review of Reviews*, March, 1937, p. 36.

perty rights from being violated, on the ground that he lacked the authority for such action.⁵⁵ His policy of inaction, from the standpoint of the operators, was later justified when a canvass of the situation appeared to indicate that if such an action had been taken it would, "for a time at least, have precipitated bloodshed and veritable civil war in the anthracite region, for to an extraordinary extent public sentiment, including even that of the clergy, is with the bootlegger."⁵⁶

The Governor's tour of inspection through the affected region.

However, the Governor realized that the problem was approaching a crisis and announced a three-day itinerary through affected regions in which he proposed to glean first-hand information for himself. In his tour of inspection, the Governor was told that in Shamokin, the hardest hit town in the coal belt, "one-third of the total population is on direct relief and that 45 per cent of the unemployed miners are receiving some form of public assistance." In other towns which he visited, "he found the situation to be as bad, with most of the unhired miners on relief and attempting to supplement their meager emergency food allowance of thirty-one cents a day per person by bootlegging coal."⁵⁷

Coal stealing a "respectable" business. In his conferences with "representative citizens" the Governor was told that "coal stealing is considered as respectable business." Merchants informed him that they "depend on the bootleggers for their livelihood. Bankers complained that speculation and overproduction and distribution of the product were the real causes of suffering in the area."

Shut down of mines—men out of work. Further, the Governor was told that in the Pottsville region, "twenty-six of fifty collieries are idle. In the middle-western district, the Mahoney-Shenandoah district, twenty-nine of sixty-five mines are not

⁵⁵ Lebow, S., *op. cit.*, p. 36.

⁵⁶ *New York Times*, November 14, 1935.

⁵⁷ Lebow, S., *op. cit.*, p. 36.

working; and in the northern fields more than half of the properties are shut down.”⁵⁸ And to make the situation more tense, the estates and corporations in which holding companies speculate according to the sales of anthracite refused to lease their abandoned lands to other operators. Almost unanimously, Governor Earle was told that “sending in troops would result in bloodshed, that when the army departed, the men would return to bootlegging. In addition, maintenance of troops in the coal fields and the added burden of relief would cost the state a huge sum.”⁵⁹

The Pennsylvania legislature creates a fact-finding commission.

In the Governor’s message to the state legislature he urged the creation of a fact-finding commission to “investigate the financial set-up of the major coal producing corporations; to see whether the state, by means of bond issues or other devices, could gain control of idle coal fields and rent them to independent operators; to determine whether the federal government could be induced to offer the companies a ‘fair price’ for their abandoned lands, so that a number of unemployed miners could be returned to legitimate employment; and to learn whether the companies will lease idle lands to private operators.”⁶⁰ In addition, to this, the Governor gave the problem recognition by saying that “bootlegging is a symptom of an even greater disease which is destroying Pennsylvania’s great anthracite industry, at great loss to those engaged in the industry, to the communities of the anthracite region and to the commonwealth as a whole.”

Bootleg coal merely a symptom. Bootlegging merely as a symptom implies, of course, that we would have to go more deeply in order to understand the practice of bootlegging itself. The abuses responsible for the appearance of bootlegging coal should be examined. It is almost imperative that this should

⁵⁸ *Idem.*

⁵⁹ *Ibid.*, p. 37.

⁶⁰ *Idem.*

be the procedure in order to attain a proper perspective of the problem.

Location of the anthracite fields. The anthracite coal fields are located in the Northeastern part of Pennsylvania. The total area of the coal fields is 1,700 square miles, but the coal deposits, however, occupy only 480 square miles.⁶¹ From the trade standpoint the region is divided into three fields: (1) The Northern or Wyoming Field; (2) The Lehigh or Eastern Middle Field; and (3) the Schuylkill or Western Middle Field. In brief, they are frequently referred to as the Northern, Middle, and Southern.⁶²

Coal the only industry in this region. The anthracite region is a one-industry area; i.e., the mining of anthracite is the main source of income of the one million or so people who live in the anthracite counties. It is true, however, that only one-half of this number is constituted by the miners and their families; the rest is occupied in government or in providing certain essential services and commodities that are vital in the existence of the communities. The dependence of the sources of income of the latter is altogether apparent from the fact that when coal is in demand, "the stores of Hazleton, Shamokin, Mount Carmel and Wilkes-Barre are filled with customers. If the demand drops, there is gloom from the South to Scranton in the north. A single colliery may furnish the sole support of an entire community."

Concentration of ownership. What was heretofore unknown concerning Pennsylvania's number one industry is the relatively high concentration of ownership. In a report submitted to the Governor of Pennsylvania, Mr. W. J. Lauck, chairman of the Anthracite Coal Industry Commission, states that for "many decades the Pennsylvania anthracite industry was one

61 National Industrial Conference Board, Inc., *The Competitive Position of Coal in the United States* (1931), p. 1.

62 Hunt, E., Tryon, F. and Willits, J. (eds.), *What the Coal Commission Found* (1925), p. 283.

of the richest and most lucrative monopolies in the United States. There was no other important known supply of anthracite on this continent . . . and profits, dividends, and royalties swelled in an ever-increasing golden flood.”⁶³

Competition is stifled. More specifically, it is charged that J. P. Morgan and Company control eight of the leading anthracite coal operating companies and seven of the nine railroads hauling all of Pennsylvania’s mined anthracite. In addition, the First National Bank of New York owns two railroads and two coal operating companies together with the Morgan firm. The importance of this intimate relationship between the railroads and coal operating companies lies in the stifling of real competition in the price which the consumer pays for delivered anthracite. Under such a situation they can forego profits on the production of anthracite and recoup them in the high freight rates. They can operate on a very close margin, or at a loss, preventing any real competition in the price at which anthracite is delivered to the consumers.

The distribution in the production of anthracite follows very closely the high concentration in the ownership of the mines and the distributive aspects of the anthracite. At present, production is divided between eight large “old line” corporations, “owning 65 per cent of all the coal lands now being mined and producing about 60 to 65 per cent of all the anthracite coal produced in Pennsylvania; and upwards of 160 independents, owning or leasing the remaining 35 per cent of coal lands now being mined and producing the remaining 35 to 40 per cent of anthracite coal produced in Pennsylvania.”⁶⁴

Capital investment impossible to determine. Because of the high concentration of the ownership of the industry it is almost impossible to determine what is the proper valuation of the capital invested. The anthracite industry, like any other

⁶³ “Ad Interim Report,” *Anthracite Coal Industry Commission*, May 15, 1937, p. 16.

⁶⁴ Ernst, M. L., “Report,” *Anthracite Coal Industry Commission*, May 17, 1937, p. 4.

industry which enjoys or had enjoyed monopolistic practices, sometime or another utilized this advantage in evading certain unwelcomed obligations. According to Messrs. Lovett, Laidler, and Thomas,⁶⁵ the "anthracite mine owners have within the last ten years levied against the public the sum of \$200,000,000 in inflated valuations, which is charged up against the cost of every ton of coal mined. One dollar in every three carried on their books is water, according to the figures of the Coal Commission. They will ask you to guarantee them a return on this inflation, although at the time its only excuse was to evade the excess profits tax. Moreover, they are evidently to inflate the industry another \$400,000,000 as soon as they can. There is warrant for these capital claims upon the industry other than the growth in population in the country. But until the nation decides that the industry is too important to be left to those who are more intent on speculating in it than in mining coal, and nationalizes it on the basis of original costs, the public will be robbed and the miners will have a hard time getting decent wages."

The decline of the anthracite industry. It is the consensus among writers on the subject that the anthracite industry has been on the decline since 1925.⁶⁶ Nor is there a bright outlook for the industry. "It will be observed," says Mr. Ernst, "that the decline of anthracite production antedated the national depression and there is no indication that it will cease when the depression is over."⁶⁷ To what degree this is borne out by census figures is shown by the following:

The effect of N. I. R. A. on anthracite. The further decline of anthracite production did not stop with 1932. As a matter of fact, production went down still further in 1933, but gained considerably as a result of the now defunct National Industrial Recovery Act. In consequence of the invalidation of this

⁶⁵ *The Government Control of Coal* (1938), p. 53.

⁶⁶ *New York Times*, Nov. 15, 1935, p. 7.

⁶⁷ Ernst, M. L., *op. cit.*, pp. 3-4.

law by the United States Supreme Court, production went down approximately 5,500,000 tons, but again by 1936 production had gained so that the total output was 54,760,000 net tons excluding the total tonnage mined by illegal operators.⁶⁸

SALIENT STATISTICS OF ANTHRACITE PRODUCTION
1921-1932 INCLUSIVE
NET TONS

Year	Shipments	Local Sales	Commercial Production	Used at Collieries for fuel	Grand Total
1921	77,901,110	2,812,551	80,713,661	9,759,790	90,473,451
1922	46,002,698	2,378,200	48,380,899	6,302,124	54,683,023
1923	82,239,037	3,248,352	85,487,389	7,851,619	93,339,008
1924	77,247,499	3,043,939	80,291,438	7,635,424	87,926,862
1925	53,768,372	2,884,577	56,652,949	5,164,199	61,817,148
1926	75,318,820	2,687,410	78,006,230	6,431,222	84,437,452
1927	70,495,286	3,046,770	73,542,056	6,553,508	80,095,564
1928	66,487,601	3,184,825	69,672,426	5,675,644	75,348,070
1929	65,294,579	3,233,023	68,527,602	5,300,593	73,828,195
1930	61,202,057	3,144,434	64,346,491	5,038,345	69,384,836
1931	52,635,855	2,901,117	55,536,972	3,985,765	58,522,739
1932	43,894,723	2,810,337	46,705,060	3,150,161	49,855,221 ⁶⁹

The operators retrench their policies. With the continued decrease in the demand for anthracite, the course which the operating companies chose to follow is not hard to guess. There followed a wholesale retrenchment of policies; mines were closed and huge breakers were built. Charts prepared for Governor Earle by the Pennsylvania Department of Mines showed that in the southern coal belt, the Pottsville region, twenty-six of fifty collieries were idle. In the middle-western district, the Mahoney-Shenandoah district, twenty-nine of sixty-five mines were not working; and in the northern fields more than half of the properties were shut down.⁷⁰ After the closing of the mines, the operators, still intent on getting as high a

⁶⁸ *Ibid.*

⁶⁹ Mead, R. R., *An Analysis of the Decline of the Anthracite Industry since 1921* (1935), p. 16.

⁷⁰ *Supra*, p. 209.

price for their coal as was possible, refused either to equalize available work or to lease closed collieries to the independent operators.

A committee of citizens go to the federal government. To counteract this attitude of the "old line" operators, Pennsylvania citizens at Minersville sought federal action against the companies. A committee of these citizens asked the federal government to determine whether big anthracite companies in this area could continue to refuse to operate their coal lands themselves and further refuse to lease them to independents for operation.

The operators' answer. To this, the operators' reply was that "high costs compelled amalgamation of the pits and the building of huge breakers. . . . that equalization is impossible because customers demand certain types of coal which come from certain collieries. To reopen collieries whose coal is not in demand . . . would be uneconomic." That this was obviously true in certain instances cannot be denied, but the operators' persistence in clinging to this argument despite constructive proposals to meet the problem can only mean a last-ditch fight to retain control of the price of anthracite.

The more apparent effects of the decline of production took two forms: (a) in the volume of employment; and (b) in the amount of wages which each miner earned.

An increase in production but a decrease in labor. At the outbreak of the World War, well over 179,000 persons were directly engaged in the processing of anthracite and the average number of days worked at the mines per year was 245 days, or a little more than 81 per cent of the full-time year of 304 days.⁷¹ When the industry reached its peak of production in 1917, about 154,000 men worked on an average of 285 days, or a little more than 93 per cent of the full-time year. But during the four years between 1924 and 1928, 160,000 persons were employed, 6,000 more than the number employed when

⁷¹ Hunt, Tryon and Willits (eds.), *op. cit.*, p. 312.

the industry was at its peak, and they worked on an average of 225 days, or a little more than 73 per cent of the full-time year. By 1929 and 1930 there was a decline in the number of workers to around 150,000 and the number of working days was still a little over 200 days. By 1934, lowest year of the depression, the number of men employed had further shrunk to 104,633 and the average working days to 182, now about 59 per cent of the full-time year. Although there was a respite in 1934, the number of the employed had shrunk to 100,000 and the working days to 180 days per year. From this, it appears that there were less men employed in 1935 than in 1890.⁷²

Machine labor vs. man labor. Although the figures quoted above are important in themselves, they are best understood when we bear in mind the closing down " of unprofitable mines, the construction of centralized breakers, the increase in machine and strip mining . . . and the average daily output per worker." ⁷³

A decrease in work and the standard of living. The next phase that concerns us is whether or not the mine workers were able to obtain the necessities of life as a consequence of the decline of the amount of production, the volume of employment, and the number of days that each had worked. Says Mr. Ernst, " the annual earnings of those employed were: in 1929, \$1610, falling off to \$1368 in 1932, with a further decline in 1936." ⁷⁴ The writer does not pretend that these figures are by any means final in their implications. Money income regarded as significant of social conditions must be translated into real income, and thus considered as the amount of exchange that money income can command in the market. Low income may in effect be better, if the price index is low, than high income with high price index.

⁷² Ernst, M. L., *op. cit.*, pp. 8-9.

⁷³ Mead, R. R., *op. cit.*, pp. 24-25.

⁷⁴ *Op. cit.*, pp. 9-10.

The report of the U. S. Anthracite Coal Commission. However, the implication that one may get from Mr. Ernst's figures may be made a lot more lucid by a study which was made by the United States Anthracite Coal Commission. Information concerning the income and the expenditures of 910 miners and their families was procured. The information was furnished by the miners and their wives, by records of companies, service corporations and retail stores. The study covered a period of six months "just prior to the date of scheduling, or from October 1, 1922 to April 1, 1923."

In effect, the Commission concluded that a "comparison of income and expenditures reveals the fact that fifty-five in every hundred families spent all their earnings on current needs; twenty in every hundred paid all current expenses and part or all of accrued debts; sixteen in every hundred had money left after paying for current expenses to make investments or put in the savings bank. Only nine in every hundred spent more than they earned. Although there were families which saved and families which went into debt in each income group, a study of the proportions of families which went into debt, broke even, paid accrued debts, saved or invested money in each income group indicates clearly that families with incomes of less than \$125 per month have a hard struggle to make ends meet; that families whose incomes range from \$150 to \$175 may break even, save, or go into debt, depending upon individual thrift or circumstances. When the \$175 income level is reached about half the people are enabled to put aside some money for future use, as well as to pay for current needs." ⁷⁵

The miners' lot was desperate when industry was at its peak. The plight of the miners during the post-depression years is undebatable if we leave unquestioned the conclusions of the United States Coal Commission made at a time when the industry was supposed to have been at its peak of production. With the depression, the miners lost their homes, they were

⁷⁵ Hunt, Tryon and Willits (eds.), *op. cit.*, p. 301.

dispossessed of their automobiles and their meager savings were spent. For their desperate need, the immediate answer was public relief in one form or another. This, as we shall later see, contributed its due measure in creating the problem of illegal mining.

It is beyond the scope of this work to go into any lengthy treatment of the underlying causes which led to the shrinkage of the total tonnage of mined anthracite. However, the following factors should be considered in any discussion of boot-leg coal.

The high price of coal as a factor. (a) A major factor in the decline and shrinkage of the anthracite markets has been the rise in prices to almost double the pre-war level and their failure to decline in proportion to the decreasing trend of prices for competitive fuels.⁷⁶

This rise in prices was due, first, to the high cost of production; that is, more particularly, to increased wages. Since 1923, there has been in operation a wage agreement between the mine operators and the United Mine Workers of America. And upon the basis of the agreed wage scale effective in May, 1937, the miners received as much wages for a seven-hour day as they previously did for eight hours.⁷⁷ Secondly, high prices may very well have been the result of high freight rates, which have been alluded to previously. And thirdly, high prices may very well have been the result of the virtual lack of competition in the field of anthracite production. It was stated earlier in this chapter that the ownership of anthracite is rather concentrated; eight "old line" operating companies produce about 65 per cent of the total output of anthracite and these in turn are controlled by J. P. Morgan and Company and the First National Bank of New York.⁷⁸

⁷⁶ "Competitive Position of Coal," *National Industrial Conference Board*, p. 226.

⁷⁷ Ernst, M. L., *op. cit.*, p. 9.

⁷⁸ *Supra*, p. 212.

Other sources of energy offer competition. (b) Consumers of anthracite have been encouraged to use other sources of energy because of the unreliability of the supply. In the coal industry, particularly that of anthracite, there have been serious and long-continued strikes which jeopardized the consistent delivery of coal. The public therefore turned to oil-burning equipment or to the use of coke.

Inventions displace coal. (c) Up to fifteen years ago coal was not "sold;" the industry permitted buyers to "place orders." This was, of course, a carry-over of the belief that anthracite was still the most convenient and most desirable source of energy for heating purposes, and that the consumers of anthracite could have their orders filled at the companies' discretion. Because of this attitude, very little advertising was done; whereas the competing fuels very largely made the dent upon the anthracite market through this medium, aided by the invention of oil-burning devices and the adaptation of old furnaces for the burning of coke.

For instance, through the American Oil Burner Association and the Oil Heating Institute, definite standards have been adopted by all the burner manufacturers. Standard contracts have also been prepared, and uniform specifications for the installation and servicing of these burners have been developed. In addition, the above associations in 1931 used 1,310,725 agate lines of newspaper space in about forty different cities. When they were appealing only to a limited number of consumers in the anthracite-burning territory, their total agate lines in many cases exceeded that of the anthracite operators. In fact, the total for the famous Reading Anthracite and Blue Coal was slightly more than 600,000 agate lines in twelve representative cities in the east and midwest.⁷⁹

Concentration of coal. (d) The concentration of the production of anthracite in a small section of northeastern Pennsylvania "relieves the broad regional competition from other pro-

⁷⁹ Mead, R. R., *op. cit.*, pp. 106, 108, 109.

ducing fields that create a serious problem in the bituminous coal industry.”⁸⁰ Instead, its main problem apart from that of competition by other sources of energy, is a narrowing down of its area of distribution.

By far the most serious threat to the stability of the anthracite industry is the competition afforded by non-solid fuels—electricity, oil, artificial and natural gas—as well as bituminous coal and coke. This plight of the anthracite industry is paralleled by the dire straits in which the railroads find themselves as a result of the competition afforded by bus and air transportation. The difference between the two, however, is that the former is 95 to 98 per cent concentrated in the state of Pennsylvania and the latter involves the whole nation. This makes the anthracite problem a little bit harder to solve.

Lastly, in recent years there has been a decline in the use of coal for colliery purposes. It is estimated that the amount of the decline is approximately four million short tons and this is due largely to increased electrification and efficiency in mine operations. These losses, however, in the opinion of the National Industrial Conference Board should not be considered on the same basis as the losses due to competitive fuels.⁸¹

The bootleg coal problem not due to depression. It can now, therefore, easily be seen that the depression is not itself the sole progenitor of the phenomenon of poaching or illegal mining. Its responsibility for converting into a huge business proposition, a common and humble practice by poor miners of digging coal to adequately heat their homes is undeniable, but it is in the long-ailing anthracite industry that we should find the causes for the long train of circumstances that led to the debacle.

Illegal mining carried on in the open. It is the impression that illegal mining is carried on in the stillness of the night and under cover of darkness as was the wont of the bootleg-

⁸⁰ National Industrial Conference Board, *op. cit.*, p. 223.

⁸¹ National Industrial Conference Board, *op. cit.*, p. 224.

gers during the prohibition era. It is reasonable to suppose that this was so when illegal processes were at their infancy; but bootlegging of coal has become an honorable calling, thanks to the depression, and is now carried on openly. Mr. C. Paxon, writing in the *New Republic*, says that people "in this section have an impression that coal is stolen from old workings from the dead of night and run out of the mine regions in stealth. Maybe it was so during the early depression years, but by this time bootlegging is an openly established industry if not a reputable one."⁸²

The composition of bootleg miners. In a recent survey under the sponsorship of the Anthracite Institute an endeavor was made to show that "41 per cent of 7,700 bootleg miners who were questioned admitted that they were recipients of federal relief, only 35 per cent professed to have had previous experience as certificated miners and 17.5 per cent admitted that they never had been employed in any gainful occupation." The significance of these figures lies in the comparison that can be made between them and the findings of the Anthracite Coal Industry Commission.⁸³

The Anthracite Coal Industry Commission report. The report submitted to the Governor, investigating 253 bootleg holes which employed 980 men (and out of this number 666 were interviewed), showed that 46 per cent had anthracite miners' certificates; that 4.6 per cent were at that time working for the W. P. A.; 1 per cent was employed in private industry; 62 per cent of those interviewed had had employment in legal mining; 38 per cent were not previously miners; and 21 per cent never had had any job at all. This last group mentioned was constituted of boys who had largely grown up in the anthracite district and have now become of age.⁸⁴

⁸² *New Republic*, February 6, 1935, p. 356.

⁸³ Created by the General Assembly of Pennsylvania on February 16, 1937 in response to the message of the Governor.

⁸⁴ *Ad Interim Report* (1937), Pennsylvania Anthracite Coal Industry Commission, p. 42.

Any statement concerning the motives of the Anthracite Institute in publishing its figures would involve an obvious oversimplification. But it should be noted that the Institute has spent a great deal in refuting the charge that the unemployed were formerly miners who had been laid off as a result of the closing down of collieries and the mechanization of the industry. To a certain degree it succeeded in establishing that a large portion of the unemployed in the anthracite district are men who had come from the outside as soon as it was known how profitable an undertaking was to be had. However, the relief argument fades into insignificance since, as we have mentioned previously, relief money was totally inadequate to maintain the miners and their families.

Who mines bootleg coal? Interesting accounts, but nevertheless a tragic travesty upon democracy, are here noted with regard to those who are engaged in illegal mining: ⁸⁵

A Sunday school superintendent is digging coal from company property.

A citizen whose record in his town is irreproachable denounces as 'thievery' the bootlegging operations of those who sell the coal thus mined for profit, while admitting that he engages in the same practice, 'but only enough to support my family.'

Court action has been begun by one bootlegger against another on the charge of 'stealing coal.'

The chairman of a school board at \$2400 a year is digging bootleg coal from the private property of a company.

A bootlegger has sued for a 'trespass' a company which entered his yard to remove coal taken from its property.

Bootleggers demand that a mining company engaged in stripping surface coal deposits cease its operations, chasing the foreman and the laborers off and, for a time, preventing the engineer at the mine shaft from using the coal-hoisting machine.

Newspapers refer to the bootleggers as 'independent miners.'

One company's refusal to lend a steam shovel to bootleggers was followed by a dynamiting of that apparatus.

Bootleggers cut timber from company property for use for shoring their improvised mines sunk on company property.

⁸⁵ *The New York Times*, Nov. 15, 1935, p. 7.

The writer of the above citation should also have included the flouting of property rights and the willful expropriation of private property, the violation of fundamental rights guaranteed by the Constitution of this country, creating a form of "squatters sovereignty."

Accidents in bootleg coal mining. It is reported that 150 died from cave-ins during a period of two years. In Northumberland, 28 died in 1935 and 32 in 1936. About the same number died in Schuylkill during the same period.⁸⁶

The wages of an illegal miner. It is said that the bootleggers work twice as hard as in the past in order to earn as much, or in a great many cases a great deal less than during the boom years in the industry. The following is an average of the earnings of the miners:

Drivers owning their machines	\$25 to \$75 per week
Miners on their own	2 to 4 per day
Breaker men who own their plant	4 to 7 " "
Helpers in mines, breakers and on trucks	2 " "

The truckers are, as a rule, ex-miners; but on account of their better earnings, they have become the "aristocrats" of the "independent miners."

Production from illegal mines. In estimating the total output of bootleg operations, most writers and the Anthracite Institute place it at between three and four million tons and a retail value of \$32,000,000. But a more thorough evaluation of the total tonnage gained by illicit operations reveals that figures were grossly over-estimated in the past. For instance, in 1937, the total output was 2,400,000 tons or 5 per cent of the total output of the legal mines in Pennsylvania. At the height of bootleg operations, total tonnage was placed at a point not to exceed 2,900,000 tons and at a cost of \$16,000,000 per year to the consumer.⁸⁷

⁸⁶ *The New York Times*, August 22, 1937, p. 25.

⁸⁷ *Monthly Labor Review*, Dec. 1937, p. 1324.

Number of men employed in illegal mines. In 1936-1937, an average of 7,000 men were employed in bootlegging proper; at least 2,000 picked coal over culm and refuse banks; about 1,300 were employed in bootleg breakers; and 2,700 were engaged in trucking the bootleg coal. The estimated total was somewhere around 13,000.⁸⁸

The breakdown of the legal process of justice. Aside from the curtailment of production and the consequent unemployment of many thousands in the anthracite region, the most important and by far the most interesting result is the breakdown of the legal processes of justice. Property rights are definitely held in abeyance; and once again it has been demonstrated that for a law to remain a law it must have the sanction of public opinion. Undesirable may be the consequences, but this situation has been "made to order" for the political philosopher. This would prove his contention that "law is that which can be enforced."⁸⁹ But according to another school of thought, the situation in Pennsylvania is tolerable because a state which holds the machinery of justice in abeyance in no state at all. And according to this view the state of Pennsylvania has forfeited its sovereignty.⁹⁰

Let us proceed to illustrate how this machinery of justice in Pennsylvania has broken down, since the question has been resolved into the legal versus moral right—so far, with the triumph of the moral.

The Governor refuses to send the militia. Governor Earle, when presented with the collective demands of the anthracite operators that he send the state militia to the regions infested with illicit operations, responded that such an action as they demanded of him was beyond his constitutional authority, since the constituted authorities in the areas in question had not ad-

⁸⁸ *Idem.*

⁸⁹ Mr. Laski's favorite argument; i. e., at least in his earlier writings.

⁹⁰ Elliot, W. Y., "Sovereign Group or Sovereign State," *American Political Science Review*, Vol. xix, p. 148.

mitted to him that there had been a breakdown of law and order in their respective communities. For this the Governor was accused of trying to hide his pro-labor leanings behind a flimsy constitutional provision. Later developments in the controversy, however, showed that had the Governor sent the militia a "veritable civil war" would have ensued. Furthermore, it was conceded that bootlegging operations would have only ceased during the "occupation" of the territory, but as soon as the "army" had departed, the bootleggers would soon be at their bootleg holes again. This was inevitable since an army could not be quartered forever in the region where bootlegging was most rampant. In addition, the Anthracite Coal Industry Commission later showed that the maintenance of an army in the region in question would have exacted additional tax burdens upon communities already ridden with poverty.

The effort to keep out illegal coal. When bootleg coal began to make a dent in the volume of legitimately mined coal sold to the consumers in New York City, the matter was taken up with the Mayor by the dealers' associations and the Chamber of Commerce who strongly suggested that it should be taken up with the Pennsylvania authorities. It was also suggested that the number of employees in the Bureau of Weights and Measures of the Department of Markets should be increased and put to work checking the deliveries, and there was proposed also the appointment of a special inspector in the Controller's Office to assure the collection of taxes on all the coal distributed in the city. Since it was found that the bootleggers did not carry any weights or measures or bills of lading, New York City officials sought to enforce the municipal ordinance by requiring the truckers to carry bills of lading in order to avoid short-weighting. In addition to this line of prosecution, Mr. McDermott, then an Assistant District Attorney, proposed to invoke a law known as the "certificates of origin" to bring anthracite into New York State. This was voided since it was pointed out by Solicitor General Epstein that there were no means of enforcing this law.

The weakness of the former proposal was that it smacked too much of a government dictated by business. The inspectors who were appointed were given a salary of one dollar a year, but upon investigation it was shown that "the salaries of these inspectors have been paid for by coal merchants at the rate of \$35 a week and car expenses."⁹¹ Pro-bootleg opinion interpreted this arrangement as an attempt to control the market and maintain high prices.

State Police inadequate to stop illegal coal. The State Police contributed their share in curbing the bootleggers. Their success, however, was very limited on account of their inadequate number as well as their other duties. When arrests were made, they were not so much on the basis of bootlegging as overloading, faulty brakes, improper lighting, speeding and reckless driving. It is said that the truckers "drive like demons" because they want to make up for an unprofitable return trip.

The coal bootleggers were not to be outdone, however. They made arrangements with road stands and filling stations along the main highways to inform them of the plans of the highway police and the latest police ordinances. These places also served as excellent points of contact for the truckers and prospective customers. For a while, at least, the larger cities seemed to be successful in ousting the truckers by requiring them to carry bills of lading and weigh bills signed and sealed by official weigh masters, since coal scales were entirely in the hands of the legitimate dealers. To meet this threat dozens of print shops put out bills of lading and weigh bills for the truckers. Furthermore, scores of filling stations installed standard scales, which entitled them to an official seal as weigh master. A nominal sum is charged for this service, and in many cases it was admitted that they made more money this way than by selling gas.

Tax fails as a method to stop the illegal miner. One of the latest devices employed to stop the truckers is to require them

⁹¹ *The New York Times*, Dec. 2, 1936, p. 26.

to pay a very exorbitant license fee for the privilege of delivering coal within a city. In Philadelphia, for instance, the rate imposed is now \$75, in Baltimore \$200, and in Wilmington \$200. This latest device has been met as follows: the truckers establish coal depots outside the city line, where they dump the coal and resell it to retailers.

The illegal miner declared a boycott in retaliation. In another form, the bootleg miners in the Pottsville area declared a boycott upon the city of Philadelphia for the City Council's action in levying a \$75 license fee. The Independent Miners' Association placed a ban upon "all merchandise manufactured in that city or handled by its jobbers."

The bootleggers have nothing to fear from the law. Public sentiment is entirely on their side. And because of the size of the vote, politicians "cater" to them. In the few cases where there have been convictions, "the bootleggers enter the front door of the jail, and walk out of the back door." Also, the bootlegger sensing where public opinion lies, always pleads not guilty, even if actually caught stealing coal not only from company land but also from company cars, thus calling for a jury trial. There are hardly any convictions because no jury of their neighbors will convict them. Judges only reprimand them, since in a great many cases the judges themselves are ex-miners.

The recommendation of the Commission. After having surveyed the nature and extent of the problem, the Anthracite Coal Industry Commission recommended the following measures for the abolition of illegal mining:⁹²

(1) Equalization and spreading of available work. This was intended to overcome the series of spurts and lags of production. Also, this was intended to spread out whatever benefits and responsibilities there are.

(2) Large scale emigration. There are those who believe that although a certain amount of stability will be regained in the anthracite industry, it is highly improbable that it will re-

⁹² "Ad Interim Report," pp. 9-15.

capture all the market that it had lost through the competition of solid and non-solid fuels. With this expectation, production will never again reach what it was. Future production thus limited, all available mine labor will never be absorbed. And since the anthracite region is a one-industry area, the most plausible solution to this particular problem is large-scale emigration to certain parts of the country where there is greater opportunity for economic rehabilitation. In order to help miners attain this readjustment, it was suggested that the state should buy parcels of land in which people could live while in the process of vocational readjustment. This is being done for bituminous mine workers and it is regarded as having tremendous possibilities in the anthracite region.

(3) The recourse to bootlegging could be curtailed if there is an increase in colliery employment. The Commission suggested that this could be effected by the creation of a corporation to administer all the mining to be done in the land which the state acquired; which would sell its products "at a fair competitive price," hire employees on the basis of seniority and length of previous employment, and maintain wage scales and agreements with labor. The control of collieries was to be acquired in the following manner: (a) a survey was to be made of the costs of acquiring or leasing; (b) on the basis of its findings the corporation would acquire control of collieries in appropriate parts of the region; (c) this corporation would be empowered to issue its own bonds not to exceed twenty million dollars and which would be secure against revenues, to be amortized according to maturity and to be sold in the local open market—immediate capital was to be raised by means of taxation by the duly constituted authorities and the issuance of discountable tax warrants; (d) the corporation was to be administered by a Board of Directors who would be adequately compensated; and (e) the State was to declare that illegal mining should cease soon after full employment opportunities were available. The virtual cessation of illegal operations was to be the *quid pro quo* of this declaration.

The broader objectives of the Commission. The efficacy of the foregoing recommendations seemed to have been taken for granted by the Commission, although it was unanimously held that this preliminary success would be merely a salve for a graver and deeper social disease. It was, therefore, the study of this graver and deeper social disease which constituted the broader objective of the Commission. The rational basis of such a step can be understood easily enough, since, as the late Professor Hobhouse has once said, "a definite knowledge of the etiology of the social disease is a necessary prerequisite in formulating solutions."⁹³

Government intervention. Thus to perpetuate the gains to be attained through the cessation of illegal mining and to put an end to the possibility of the recrudescence of the abuses and malpractices in the anthracite industry, which we have noted earlier in this chapter, the Commission has put forth the following solutions: (a) enduring expansion of output; and (b) some form of governmental intervention.⁹⁴

(a) There are things of fundamental importance which are prerequisites for enduring expansion. First, the price level of anthracite would have to be scaled down in order to meet the competition of other forms of fuel. To accomplish this, the Commission suggested that the freight rates should be lowered because they are too high;⁹⁵ and that there should be a better

⁹³ Hobhouse, L. T., *The Metaphysical Theory of the State*, especially chapter I (1918).

⁹⁴ "Ad Interim Report" (1937), pp. 18-24.

⁹⁵ In a speech delivered at a convention of the Anthracite Institute, Mr. Gordon L. Merritt, counsel for the Institute, undertook to disprove that the anthracite industry is a monopoly, since it did not have any control over the making of freight rates. He also pointed out that when the anthracite-hauling railroads petitioned the I. C. C. to raise their rates they were turned down, while other freight-bearing railroads were allowed to do so. This, from his standpoint, showed that the rates of the anthracite-hauling railroads were not high.

It is of course to be remembered that Mr. Merritt was speaking to his employers; and although the relationship between the anthracite operators and the railroads is not as obvious as that which existed before the court

organization of distribution, since there are too many retailers and wholesalers, each engaging in destructive competition. The average retailer does not handle a large enough tonnage to allow him to do the job for less cost which eventually would be passed on to the consumer in the form of lower prices; and the wholesalers, in a great many cases, do not have a direct relationship with the operators. Secondly, the industry must increase its markets through intense sales promotion. In attacking this problem, the competitive fuels have more or less shown the anthracite operators their logical step. They should resort to more advertising and public education in the advantages and cheaper ways of burning anthracite; they should organize "follow-up" services after a sale has been concluded; they should improve anthracite heating devices and the quality of the commodity by refraining from adulterating it with slate; and lastly, sales and distribution costs should be cut down.

(b) The haphazard way in which the industry had been conducted in the past and the consequent birth of a situation which is anathema to the basic principles of a democratic government are prime considerations impelling governmental intervention. Let us see whether or not such a step is justifiable in the case of the anthracite industry.

The government should have power to step in when industry gets as low as anthracite. Losses to the operators and investors have been great and failure to arrest such a trend would prove to be uneconomic. But this is not important enough to warrant governmental intervention. More important are these facts: anthracite is one of the most prized natural resources of the nation—its exploitation has been unrestricted and that tends to no good; the operators have combined for their selfish

decree dissolved the relationship, nevertheless, it exists today but in subtler form.

In a preliminary conversation between the President and Governor Earle, before the latter had dramatically asked the federal government to take over the anthracite industry, it was suggested by the President that freight rates were too high and therefore should be cut down.

interests and prices have been maintained at a high level by means of restricting production instead of by the free interplay of supply and demand.

In the anthracite industry, as in the petroleum industry, there prevails a destructive competition between the "old line" operators and the independents. As the Commission found out, this not only stifles initiative but also makes for low prices, thereby undermining independent operation and increasing concentration of ownership.

The conduct of production has jeopardized public health and morals of anthracite communities. The haphazard way in which production has been conducted has resulted in great unemployment. And unemployment—without going into any lengthy exhortation of its grave social implications—has caused the lowering of the standard of living, jeopardized public health, undermined the morale of the anthracite and neighboring communities, relaxed physical and mental inhibitions, undermined the efficacy of established institutions for the solution of grievances, curtailed the production of goods and services, etc. It may, however, be emphasized that the most threatening of these implications to economic and social order is the deliberate flouting of the machinery of the law.

The various ways the government can assist. Government intervention in the anthracite industry can come in different forms. This is not to convey, however, the impression that there has never been any government intervention in the industry. During the war the government took over and controlled the industry. During peace time, government intervention constitutes the activities of the Interstate Commerce Commission, the United States Bureau of Mines and the Bureau of the Census. It is not intervention in the form of ownership and control of the industry by the government. Which government, state or federal, is another question, but one which we will treat later on.

The form of government intervention proposed by the Commission. The forms of governmental intervention which the Anthracite Coal Industry Commission proposes are as follows:

(1) The passage and application of a modified Guffey Act, which would have to do with wages, hours, production and distribution. The Commission is pessimistic, however, as to its success because such an Act would leave the application in the hands of the operators who are badly disorganized and mutually distrustful. The government, in this case, would merely supervise and see to it that the provisions of the Act were executed.

(2) The anthracite industry should be declared a public utility under the supervision of a fuel board. This, in the opinion of the Commission, would be merely a regulatory and restraining device, while what is needed by the industry is initiative.

(3) The creation of a corporation by the Commonwealth to take over permanent ownership and operation of part of the anthracite lands, on the model of the Tennessee Valley Authority. This would not solve the problem because this scheme would only apply the "yardstick" principle of the Authority to gauge the efficiency of the private operators.

(4) A compulsory amalgamation of all present anthracite land owners and operators into one corporation (possibly two) to be established by the Commonwealth, in order to make possible concerted action upon the problem. Heretofore this sort of action has been entirely lacking, each wanting recovery at the expense of the other. They have been unwilling to take temporarily small losses under the reorganization plans of the Commission, preferring permanent and larger losses from bootlegging, competition by other forms of fuel, and bankruptcies.

(5) Federal ownership and control. This, however, is beyond the power of the Commonwealth and therefore should be used only as a last resort.

(6) The acquisition of unused anthracite lands, either by the Commonwealth or by the federal government, but with the proviso that this would be taken up in conjunction with the first four proposals.

Governor Earle asks Congress to take over anthracite. With the bootleg question still unsolved, less than a year before his administration ended, Governor Earle asked the President and Congress to take over the anthracite industry on the ground that the only "enduring solution" to the ills of the industry is government ownership and regulation of the industry, with private operation of the mines. Such a step taken by the Governor of Pennsylvania was by no means lacking of precedent,⁹⁶

96 "We (Robert Morse Lovett, Harry W. Laidler and Norman Thomas) respectfully submit that the time has come for definite legislative action and the most effective legislative action will be a nationalization of the industry with the protection against the evils of inflated valuation in setting the purchase price and bureaucracy in administration."

Speaking more particularly, they said the "anthracite-coal industry is peculiarly ripe for nationalization. The anthracite miners in 1923 officially proposed a plan for the retirement of the capital by the industry itself. By the substitution of 6 per cent bonds for outstanding capital stock all existing capital could be retired in fifty years at a cost of 28 cents per ton, while the last official figures indicate a present cost for interest, profit, depletion, and depreciation of approximately \$1 a ton." "Government Regulation of the Coal Industry," *The Reference Shelf*, p. 53.

Another precedent that is quite full of promise is the application, of course with certain changes as warranted by local conditions, of the British formula. "It must be understood that the proposal is to apply the principle of public ownership not to the mines but to the coal lands, the present owners of which collect royalties on the output of the mines. The Church of England is the largest owner, with an annual income of \$1,850,000 coal royalties. Several members of the titled aristocracy collect the equivalent of half a million dollars a year each. When the Baldwin government asked the owners to set a value on their royalties, they mentioned 150,000,000 pounds, but they agreed to accept the amount fixed by the commission appointed for that purpose. The commission fixed 66,450,000 pounds. There were loud protests from those who so long had been the recipients of unearned income from the nation's most basic and most depressed industry, but the figure stands. While the mines will continue to be owned and operated by private corporations, the government will be able to make a more equitable adjustment of royalties than now exists, to safeguard the interests of the consumers and to improve the condition of the workers. According to the terms of the government's coal

although he ignored the spirit of the recommendation of the Commission; i.e., to attempt to solve the problem as best the constitution of the commonwealth of Pennsylvania would allow him, with federal government ownership and regulation as only a "means of last resort."

The question of a "fair price" to the operator. The encumbrances of such a step are many. First, there is the hardship of determining the "fair" price, although it was estimated by the Commission that it would cost the government from \$200,000,000 to \$250,000,000 to purchase the coal lands. Secondly, there are twenty-seven states other than Pennsylvania that are producing bituminous in commercial quantities. Possibly, it is suggested, their Congressional delegates must be shown that the prosperity of anthracite would not hurt their own coal fields. Thirdly, the oil-producing states will come into the picture. It is to be doubted whether or not they would be willing to surrender part of their market to anthracite. And fourthly, there is the problem of taxation. In Luzerne County alone, coal company property was valued at \$115,521,303 out of a total county valuation of \$318,285,651. The hard-coal municipalities would be plunged into difficult economic problems since the government-owned coal lands would be tax exempt

bill, the title of the properties will not pass until 1942, but provision is being made for an interim procedure which is expected to produce some immediate improvements in the industry, which will better the situation of all concerned. Thus, without any pronouncement about public ownership or the iniquity of private monopoly in resources essential to the life of the nation, a conservative government has taken a very sensible step which, if suggested in this country, would be considered a very radical step." *The Christian Century*, Nov. 24, 1937, p. 1445.

The essential features of the British formula are the organization of the British coal mines into district groups for the purpose of controlling production by working only the most economic mines, and to subsidize exports by increasing prices to domestic consumers. The six districts will each be administered by an independent directorate. This will make for flexibility of action and the adoption of methods which local conditions call for. The government, however, will have the power to supervise the organization and policies of the district pools and may compel them to adopt certain plans of organization and certain selling and price policies.

and it is very doubtful whether or not there are sources that could compare with the taxation accruing from coal lands.

The federal government refuses the offer. It was only a few months ago that the federal government's position became known. Finally on March 31, 1938 the Anthracite Coal Industry Commission announced that the federal government had declined to take over the anthracite industry. In the Commission's final report, it urged the creation of a Public Service Commission.⁹⁷ Such a commission would have the power to regulate the price of anthracite at the mines; it would have the power to establish quotas by districts and mines, on the basis of unemployment, community needs, marketing methods and cost of production; it would also have the power to establish non-profit cooperative marketing organizations to deal directly with the retailers and to reduce the cost of distribution; it would be authorized to establish a public corporation for the purpose of production and distribution in bootleg areas; it would have the usual powers to examine books, to establish a uniform system of accounting, etc.; and it would have the power to represent the entire industry in matters of common interest, e.g., negotiations over freight rates, etc.

The question of coal is still unsolved. What will come out of the bootleg question and what the ultimate solution will be are still open questions. But the labor difficulties presented in sit-down strikes and bootleg coal both might very well serve as the best illustration we have had in American industry of the need for national legislation, for some constructive far-reaching plan that will largely remove both threats of the "sit-down" and "bootleg," and the causes of social unrest and industrial disturbances. There is need for a process in industry whereby labor disputes may be settled and adjusted legally under a rule of legal order, with a conscious social background. A national process of mediation and arbitration may go a long way in solving the problem.

⁹⁷ Anthracite Coal Industry Commission, "Report and Final Recommendations," March 31, 1938.

CHAPTER VII

THE LABOR POLICY OF STEEL AND GOVERNMENT INTERVENTION

Organization of U. S. Steel. The United States Steel Corporation was formed in 1901, combining the following corporations: Carnegie Company of New Jersey, Federal Steel Company, American Steel and Wire Company, National Steel Company, American Tin Plate Company, American Steel Hoop Company, and the American Steel Sheet Company. At the time of its formation, the corporation controlled 43 per cent of the pig iron production and 66 per cent of the steel ingot and casting production of the United States. Today it is the dominating figure in the steel industry of the world. As recently as 1922 Judge Gary testified before the Lockwood Committee¹ that the corporation had a monopoly in certain products of the steel industry and produced about half of the supply of many others.

The steel industry is one of the largest employers of labor in the country. Only the average monthly numbers of wage earners engaged in bituminous coal mining and on steam railroads were larger than iron and steel in 1929 and 1933. In 1933 only the cotton goods and the combined clothing industries furnished higher average employment among the manufacturing industries.²

Labor policy of U. S. Steel. The labor policy of the United States Steel corporation may be traced back to the labor policies of the subsidiary companies, especially that of the Carnegie Company. From the time of the famous Homestead strike it was the policy of the Carnegie Company, as well as most other

¹ A New York Legislative committee created in 1922 with Charles G. Lockwood, chairman, and Samuel Untermyer, counsel, to investigate labor tangles in the New York construction industry.

² Daugherty, C. R., de Chazeau, M. E. and Stratton, S. S., *Economics of the Iron and Steel Industry* (1933), p. 119.

companies, to impede the progress of labor unions in the industry. The statement of Mr. Frick, Chairman of the Carnegie Company, depicted the attitude of the industry when he said, "I can say with greatest emphasis that under no circumstances will we have any more dealings with the Amalgamated Association as an organization. This is final." This "no conference" attitude prevailed in the United States Steel Corporation until 1937.

The compromise policy of Mr. Gary. At the time of the strike of 1901 there was quite a struggle within the councils of the corporation regarding its labor policy. Because of the infancy of the industry, Mr. Gary and a few others tried to steer a moderate course. Though the Carnegie people within the corporation held to their attitude of "no conference," a compromise policy was adopted. It was decided that the general policy should be to temporarize for the next six months or a year "until we get fully established," and that the conditions of labor and labor unions prevalent at the different plants should be undisturbed. If any changes occurred later, they could be handled individually. This "go easy" policy is definitely stated in the minutes of April, 1921.

The minutes of the corporation show that there was a struggle on two important points: first, whether the corporation should have a uniform policy of its own or leave this matter to the individual companies; second, in case the corporation later decided to have a uniform policy, what should that policy be? As far as the first problem was concerned, the corporation slowly but surely decided to adopt a uniform policy. The decision on the second point, as stated and publicly repeated, was as follows: "We do not combat although we do not contract or deal with labor unions as such; this policy has been the policy of the corporation till now."

Opposed to the immense power of the corporation was a labor force without any effective organization or definite purpose. The labor forces of the corporation since 1900 have fluctuated between 147,000 and 268,000. The corporation con-

sistently adhered to the open shop policy until 1937, and the labor organization struggled for collective bargaining and the closed shop all that time. Labor forces in the United States Steel Corporation have not been organized because of the labor policy of the corporation and its immense financial and political power in combatting the unions.

The history of collective bargaining in U. S. Steel. We will try to trace the history of the struggle for collective bargaining in the United States Steel industry since 1900. The first strike took place in 1901, and the immediate causes were as follows.

The American Tin Plate Company, the American Sheet Steel Company, and the American Steel Hoop Company were the only corporation subsidiaries who had for a number of years signed a scale for all or some of their plants. With the formation of the corporation, the Amalgamated was faced with the problem of either going ahead with the organization of the workers or being ousted from the steel industry entirely. It realized that only an effective union could combat the corporation. Consequently, it asked the three subsidiaries mentioned above to sign for all the mills, and to state the labor policy of the corporation. This demand was bound to result in a strike.

The strike of 1901 and its failure. A conference was arranged between the representatives of the three companies and the Amalgamated, ostensibly by the individual companies, but actually by the corporation. The Amalgamated insisted on all mills of the three companies and since this was refused, it carried out its intention to resort to a strike, which was called on July 15, 1901. The response, for various reasons, was not unanimous; the strike was settled by signing for fewer mills than before, and resulted in the promise to refrain from any attempt to organize the workers in other mills and the practical loss of the right to proselyte among the non-union men in a unionized mill. Clearly, then, the main issue of the strike was the right to unionize and the recognition of the union. The result was disadvantageous for the Amalgamated and weakened the bargaining power of labor in the corporation.

The strike of 1904 and its failure. In 1904 the Carnegie Steel Company, which was merged with the American Steel Hoop Company, offered the Amalgamated a scale of wages for the Hoop mills which was so unsatisfactory that a strike was called. It was lost, and as President McArdle of the Amalgamated expressed it, "that wound up organized labor in the plants of the Carnegie Steel Company." It seems that the cause of the strike was an attempt to oppose reduction of wages, but the result was the entire elimination of a union from one of the subsidiaries of the corporation. This shows another side of the labor policy of the corporation—the "go easy" tactics, accompanied by the determination to eliminate slowly but surely labor unions from all the plants of the corporation. This was achieved in 1909. During the whole period between 1902 and 1909 the Amalgamated had lost one mill after another so that in 1908 only fourteen of the steel corporation's mills were recognized as union mills, and of these two had been definitely abandoned.

The steel company reduces wages. On June 1, 1909, the American Sheet and Tin Plate Company (a merger of the American Sheet Steel Company and the American Tin Plate Company) served notice in these fourteen mills that after June 30, 1909, they would be operated as "open mills." At the same time the company announced a general reduction in wages, averaging 3.5 to 4 per cent, and the abolition of all sliding scale systems. The attempts of the Amalgamated to secure a conference with the officers of the subsidiary and later with those of the corporation failed.

The strike of 1909 and its failure. On July 1, 1909, all of the mills in the American Sheet and Tin Plate Company struck, except one, and many non-union men went out in sympathy. The strike was called off on August 27, 1910. It was a complete failure. It meant the elimination of unions from the United States Steel Corporation. From this time until 1919, the question of unions in the corporation mills was dormant.

A. F. of L's effort to organize the steel workers in 1918. In 1918, the American Federation of Labor passed a resolution to organize the steel workers. The steel industry was the master-clock of the war and was to be kept in operation at all costs. It was an opportunity to organize the industry such as might never occur again. The workers were also ready to accept the union. During the war they were receiving larger money wages, and their complaints and grievances were receiving prompt attention. They were, therefore, inclined to organize in order to solidify their war gains.

The A. F. of L. convention of 1919. In June, 1919, the American Federation of Labor in its Atlantic City Convention received a report stating that upwards of 100,000 men had joined one or the other of the unions involved. Immediately after the close of the convention, Mr. Gompers asked Mr. Gary to meet the executive committee of the Federation. Mr. Gary did not even trouble to answer this communication. The executive committee, after ascertaining that 98 per cent of the men favored a strike, went to New York in an effort to see Mr. Gary. Mr. Gary refused to see them, stating in a letter on August 27 that they did not represent a majority of the corporation's employees, and that, furthermore, the corporation never dealt with unions as such. In its reply, the committee stated that Mr. Gary's "no conference" attitude seemed unreasonable to them, and that they could prove that they were representing the men only by calling them out on strike.

The strike of 1919 and its failure. The committee returned to Washington, conferred with Mr. Gompers, and saw President Wilson. Although the President agreed to attempt to arrange a conference with Mr. Gary for the executive committee, he was unable to do so; and the union leaders set the strike for September 22. Officially, the strike lasted from September 22, 1919, to January 8, 1920; actually, the heart was taken out of it long before then. The committee claimed that 365,000 men were striking on September 29 and 109,300 on December 10.

The second figure is less than one-third-of the first. The men returned to work without gaining any of their demands; in practically every respect, the strike was a failure.

Labor maintained that the strike was brought about by the refusal of Mr. Gary to agree to a conference. The purpose of the strike was to force a conference to set up trade unions for collective bargaining in regard to wages, hours of labor, and conditions of employment.

The strike committee in a letter to Mr. Gary dated August 26, 1919, maintained that "conditions of employment, the home life, misery in the hovels of the steel workers are beyond description . . . the standard of life of the average steel worker is far below the pauper line."

The reasons for the failure of all strikes in steel. The reasons for the failure of all strikes in the steel industry are the immense size, wealth, and power of the industry—particularly of the corporation—which have rendered its position impregnable against any attack. Of course, lack of funds, lack of strong unions, and lack of united leadership of labor are also involved; but the financial position of the corporation and the methods it has used to secure and maintain a non-union organization are the main reasons. Among these methods may be found the following:

1. Closing mills after signing a scale for them.
2. Using convict labor for the purpose of "blocking the growth of labor unions."
3. Engaging spies to report on "labor agitators."
4. Engaging strike breakers.
5. Discharging men for union activities.
6. Blacklisting men for union activities.
7. Employment of foreign in preference to native labor.
8. Inauguration of "welfare" programs.

C. I. O. organizes steel in 1937. The steel industry offered a stone wall of resistance to unionization until 1937. In March, 1937, the United States Steel Corporation, employing 250,000

workers, recognized the C. I. O. and contracted with it for higher wages and the forty-hour week. The large independent rivals of the United States Steel matched its wages and hours principle to sign with Company unions. They held that signed contracts would be the prelude to demands for a closed shop. So far these companies have been able to resist the C. I. O.

Reduction of wages in 1930. In 1930, due to a decrease in business, the United States Steel Corporation adopted the part time or "stagger" system of employment for its workers. The plan was to offer as much work as they had to as many workers as possible. But in 1931 the yearly salary and wages were reduced as follows: on August 15 all salaried employees receiving over \$1,800 per year were reduced from 10 to 15 per cent, depending upon the character of services rendered; and on October 1 all salaried men not affected by the former adjustment were reduced 10 per cent, as were all wage earners. This curtailment in payrolls amounted to \$3,991,000. It is interesting to note that while this \$3,991,000 was being deducted from the payrolls of the workers by the Board of Directors, that same Board declared \$62,203,626.50 in common and preferred dividends.

In 1932 there was another general deduction of 15 per cent in wages and salaries, as a result of which labor lost \$9,600,000 and United States Steel saved the same amount. Again it is interesting to note that while the company was staggering its laborers to work and deducting 15 per cent from their pay envelopes it also voted \$20,716,163.25 in dividends.³ Actually, since 1930, the workers for United States Steel had been sharing the work with each other under the "share the work" or "stagger" plan and also sharing their wages with the stockholders of United States Steel.

Effect of N. I. R. A. upon labor in United States Steel. After the National Industrial Recovery Act went into effect in August, 1933, the average hourly wage and salary advanced

³ U. S. Steel, *31st Annual Report*, Dec. 31, 1932, pp. 1-9.

approximately 25 per cent over rates paid in June of the same year.⁴ During the year 1934, the low rate of operations required the continuance of the plan adopted in 1930 of alternating employees so as to spread the available work among the maximum number of employees. This system permitted giving the same average employment to 10 per cent more men than during the previous year. This, however, meant an actual decrease in weekly hours worked per man for 1934 over 1933. But thanks to the N. R. A. code there was an increase in hourly wages.⁵

Stockholders abrogate employees' stock subscription plan. The stockholders at their annual meeting on April 1, 1935, abrogated the employees' stock subscription plan, the last offering of stock under this plan having been made in 1933. Any continued activities under this plan are now confined to those growing out of the existing subscriptions which carry on according to their terms until the benefits conferred thereby are completely discharged. The profit-sharing plan for employees was abrogated on April 1, 1935. So it is doubtful that the employee is economically any better off in spite of his slight hourly increase in wages. The company certainly cut off all the extra considerations to the employee.

Steel adopts Code of Fair Competition and raises wages. United States Steel in 1934 increased the number of employees by 10 per cent to a total of 189,881, while the payroll increased almost one-third. This increase in total payroll arose largely from the increases in wages and salary rates which were made on July 16, 1933, in conjunction with adoption of the Code of Fair Competition and from further increases effective April 1, 1934. This latter increase equalled 10 per cent to the wage earners of most of the subsidiaries and to salaried employees receiving not in excess of \$3,000 per year. To a great extent this wage increase can be attributed to the Code of Fair Com-

4 U. S. Steel, *32nd Annual Report*, Dec. 31, 1933, p. 5.

5 U. S. Steel, *33rd Annual Report*, Dec. 31, 1934, p. 9.

petition formulated under the National Industrial Recovery Act. In the 33d Annual Report of the United States Steel Corporation, Mr. Myron Taylor, Chairman of the Board of Directors, called attention of the stockholders to the fact that "the increase in wage rate which the code gave rise to has added materially to the costs of production."⁶ After the decision rendered by the Supreme Court on May 27, 1935, declaring the National Recovery Act unconstitutional, the United States Steel codes were rescinded.⁷

Status of labor in steel before the Code of Fair Competition. Before the Code of Fair Competition period, only 2 per cent of the iron and steel workers were covered by trade agreements developed through the practice of collective bargaining between independent unions and managements. Daugherty and Stratton point out that about 20 per cent of the workers were covered by employee representation plans which, although failing to function as collective bargaining agents for the determination of basic employment conditions, served as more or less satisfactory media for the adjustment of individual grievances; consequently, not only were 98 per cent of the workers in the industry without true collective bargaining facilities, but almost 80 per cent of them lacked any organized means whatever for democratic protection.⁸ Those who are familiar with the industry will know that with such a labor organization the laborer is subject to the arbitrary actions of his immediate supervisors. He has little if any protection against unfair company policies or against possible unfavorable executive administrative power.

Adjustment of the operators and the workers to the Code. During the life of the Code the union representatives for the United States Steel workers were none too able to make the structural and functional adaptations required by the Code

⁶ 33rd Annual Report, Dec. 31, 1934, p. 3.

⁷ 34th Annual Report, Dec. 31, 1935, p. 3.

⁸ Daugherty, etc., *op. cit.*, p. 930.

authorities. These adjustments were long overdue, and it would have been expecting too much that they be made within the short space of two years. Most of the failure can be placed on the shoulders of the officers who were little if any better than the labor movement in general to which they belonged. They were actually the product of the steel industry's anti-union labor policies, useful to the company, but to the workers worse than no union because they took the place of and kept out a union that might have served the worker.

Beginning of a new labor policy in U. S. Steel. There can be little doubt that the passage of the National Industrial Recovery Act, with all its faults, marked the beginning of a new period in labor relations in the United States—a new relationship in that it brought to the surface certain attitudes that had been developing in the minds and emotions of American workers, which thus pushed to the fore the issue of organization. No objective analysis of labor events since the Recovery Act can fail to show that most of the country's wage earners were ready for collective or group action, and that the main issue was over the form which labor organizations were to take. The application of large numbers for membership with the C. I. O. and the final break of the A. F. of L. with the C. I. O. are but additional evidence on this point. At the time of the Code the immediate question was whether the existing "outside" independent unions or the "inside" company unions were better suited structurally and functionally to meet the workers' needs for collective action. We must still wait for the form and function that the organization will offer to the workers, or which the workers will work out for themselves. Will something new in labor organizations evolve, something that will make the present set-up antiquated and obsolete?

Demand upon steel's organization made by the Code. Under the Code the steel companies themselves were disposed by circumstances under the Recovery Act to yield their workers a small measure of their almost absolute pre-code control of employment conditions and labor relations. More than that, they

found that they were profiting from the introduction of this degree of labor democracy.

There is little doubt that there was a definite, appreciable advance toward the practical, attainable objectives of labor. This advance was achieved under the legislation creating the National Industrial Recovery Act and the government agencies concerned with enforcing Section 7(a), sometimes with the acquiescence of, but usually in direct opposition to, the steel companies.

The Code as an experiment in industrial self-government. The Code of Fair Competition for the iron and steel industry was an experiment in industrial self-government. It was also an experiment in governmental legislating machinery for both industry and labor to follow. Confronted with the demand from the government that the industry spread employment by setting up minimum rates of wages for common labor, higher hourly rates of pay, and shorter hours of work, steel executives began to formulate new rules and regulations which became a part of their reorganization and stayed in part after the Code had gone.

Inadequacy of the Code. This is no effort to justify the complete Code. It can be justified only insofar as it can be shown to be in the public interest to protect industry and labor from each other and from themselves. Yet, that this approach may not have been the approach of protective legislation in the past, even that it may be inconsistent with recognized precepts of free competition, is not sufficient reason for condemning it. At this point, however, it is desired only to call attention to the legislative character of these provisions. They are best exemplified in the following sections and sub-sections of the Code:

Section 7(a) of the Act reads as follows:

Every code of fair competition, agreement, and license approved, prescribed, or issued under this title shall contain the following conditions: (1) that employees shall have the right to organize and bargain collectively through representatives of their own choosing,

and shall be free from interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; (2) that no employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing; and (3) that employers shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment, approved or prescribed by the President.

The Act goes on in sub-section(b) to state:

The President shall, so far as practicable, afford every opportunity to employers and employees in any trade or industry or subdivision thereof with respect to which the conditions referred to in clauses (1) and (2) of sub-section(a) prevail, to establish by mutual agreement, the standards as to the maximum hours of labor, minimum rates of pay, and such other conditions of employment as may be necessary in such trade or industry or subdivision thereof to effectuate the policy of this title; and the standards established in such agreements, when approved by the President, shall have the same effect as a code of fair competition, approved by the President under sub-section(a) of section 3.

It states finally in this connection in Section 7(c):

Where no such mutual agreement has been approved by the President he may investigate the labor practices, policies, wages, hours of labor, and conditions of employment in such trade or industry or subdivision thereof; and upon the basis of such investigations, and after such hearings as the President finds advisable, he is authorized to prescribe a limited code of fair competition fixing such maximum hours of labor, minimum rates of pay, and other conditions of employment in the trade or industry or subdivision thereof investigated as he finds to be necessary to effectuate the policy of this title, which shall have the same effect as a code of fair competition approved by the President under sub-section(a) of section 3.

The President may differentiate according to experience and skill of the employees affected and according to the locality of employment; but no attempt shall be made to introduce any classification according to the nature of the work involved which might tend to set a maximum as well as a minimum wage.

United States Steel recognizes collective bargaining. Industry at the time of the original Code openly announced its intention of interpreting the collective bargaining section according to its own light. But the work was done, and collective bargaining has been recognized by United States Steel as one of the additional rights of labor. It might be suggested that should industry and labor continue the industrial warfare as they have in the past, a system will be developed of determining labor standards through codes, as an alternative method to collective bargaining. Also, the codes may be used in the settlement of industrial disputes as well as in maintaining industrial peace.

It is not too strong a statement to say that perhaps 90 per cent of the industrial warfare that has stirred this country since 1936 would have been averted had labor been given, as under the Code, the right to organize and to bargain collectively in regard to wages, hours, and working conditions. There have been labor reforms, to a degree, and many more are coming, but their coming is painful and slow. Even in 1937, the Senate investigation disclosed anti-union espionage by some employers. Could Section 7(a) of the Code have been maintained, the labor strife for the first six months of 1937 might have been avoided.

CHAPTER VIII

METHODS OF PREVENTING AND SETTLING LABOR DISPUTES

Compulsory industrial arbitration in the U. S. In the United States the state of Kansas is the only state which has tried the system of complete compulsory arbitration for industrial disputes. In 1920 the Kansas legislature, after a violent coal strike which had set public opinion against such a method of settling industrial disputes, created a Court of Industrial Relations. This court was composed of three judges appointed by the Governor who were to serve for three years. According to the Kansas Act, all industries "affected with a public interest," including public utilities, railroads, mining, and the food and clothing industry, were protected against lockouts, strikes, boycotts, picketing, and all related warfare. The court was authorized and empowered to intervene on its own initiative or upon the application of the attorney-general or any interested citizen when disputes arose in any of these industries. The court also had the power to require submission of evidence and to hand down decisions adjusting wages, hours, working conditions, and working rules in keeping with three criteria: (a) "fair" wages and healthful conditions for wage-earners; (b) "fair" profits for employers; and (c) "fair" prices for the consumers. In emergencies the court was allowed to take over any enterprise and operate it.

Effect of awards. The court's orders were to be effective for at least sixty days. At the end of that time either party to the dispute might appeal for a re-hearing to the Industrial Court or to the Supreme Court of Kansas. The awards were to be binding unless modified after the submission of new evidence. Sanction was provided for by permitting the Industrial Court to bring suit in the Supreme Court and by setting appropriate penalties for violations. The employers' right to discharge

workers as individuals and the workers' right to quit work as individuals were to remain lawful.

Labor retains right to organize and bargain collectively. The court also recognized the laborers' right to organize and bargain collectively. However, when stripped of its weapons for bringing economic pressure to bear upon employers and not possessing the weapon of political action, organized labor had some justification for its claim that the right to organize was almost hollow.

Court grows in disfavor. For the first two years this court functioned fairly well, but in the process it incurred the opposition of both the employee and the employer. The latter's chief dislike was on the ground that the court's decisions usually favored labor. The employees generally hated it because it prevented Kansas unionists from participating in the nationwide railroad and coal strikes of 1921-22. Also, the district president of the United Mine Workers, along with some others, was convicted and given jail sentence for disobeying the court's orders. The appeal of this case to the Kansas Supreme Court resulted in that tribunal declaring the Act constitutional. But in 1923 the Wolff Packing Company's controversy had been settled by the Industrial Court, which granted a wage increase, and this case was to be used as the test. It came before the United States Supreme Court, and that tribunal held that the manufacture of food products was not directly or closely enough affected with a public interest to justify a state in giving a court the power to determine wages by compulsory arbitration.¹ By the decision the wage clause of the Act was held an infringement of the freedom of contract protected by the Fourteenth Amendment. Almost the same case came up again two years later. In the award against the Wolff Company the Kansas Industrial Court had struck out the wage provision of the Act and had tried to enforce the Act with regard to hours and other conditions, but now

¹ Wolff Packing Co. v. Court of Industrial Relations, 262 U. S. 522 (1923).

the operators again appealed to the United States Supreme Court after an adverse decision in the Kansas Supreme Court. The United States Supreme Court again held the Act was invalid as applied to hours regulation in the packing industry.²

The creation of the Public Service Commission. In 1924 a change occurred in the political administration of state affairs in Kansas, and, as a result, the Act was defunct even before the last case came before the United States Supreme Court. The new governor and the legislature of 1925 abolished the Court of Industrial Relations and placed its functions in the Public Service Commission. The Act, however, is still on the statute books and is constitutional as regards the fixing of wages and hours in the railroad and public utility industries. The Supreme Court never expressed itself on the right to prohibit strikes in any of its decisions, so this power of the Act still holds.³

Compulsory investigation with voluntary acceptance of awards. Compulsory investigation, with voluntary acceptance of awards, has been used by three governments: the United States federal government in connection with railway labor disputes, the state of Colorado, and the dominion of Canada. The Canadian Disputes Act we deal with quite extensively in Chapter IV; Chapter V is given over almost entirely to the Railway Labor Act.

The Colorado Act. The Colorado Act of 1915 created an Industrial Commission and authorized this body to settle labor disputes in industries with a "public interest." The Act was modeled in some particulars after the Canadian Disputes Act established in 1907; this was so in the requirement that mediation be first tried by the Commission before formal hearings were held and awards made.

2 Idem.

³ In the case of *Dorchy v. Kansas*, 264 U. S. 286 (1924), the Court held the Act's provisions unconstitutional for coal mining. This subject is dealt with above in Chapter IV, "Legal Methods and Techniques Affecting Labor Disputes."

The operation of the law has been less favorable than that of Canada. Organized labor opposes the Act and its administration very largely on the ground of fines and imprisonment for violations during the nationwide strikes and anti-union drives following the war. The unions also dislike the compulsory thirty-day waiting period, stating that it deprives them of their chief weapon by giving employers time to prepare for a strike. Employers are on the whole favorably disposed toward the law. Its success can be regarded as doubtful. The Commission has worked much too slowly and with a low degree of efficiency; the state has been "close" in making appropriations for its labors. In some cases the Commission's decisions would seem to have been based on political expediency rather than on a uniform principle of adequate protection for the workers, organized and unorganized.⁴

In this country, the National Labor Relations Act and the Railway Labor Act are the nearest approach to a nationally legalized process of settling labor disputes.

Strikes and the community. What are the costs of strikes, not only to the employer and employee, but to the community? Events happening to great blocks of people, even over a short period of time, reflect themselves so definitely in the community that no society can continue to overlook their cause. When we speak of the community we do not restrict that term to the corporate limits of the community of the striking plant. The community affected by stoppage of work in a large plant extends far beyond the immediate locale of the strike. Upon normal production in that plant depend employment in distant mines and mills which supply the raw material and semi-fabricated parts, the work crews of transportation companies, and in a thousand widely-separated cities, the welfare of retailers who distribute the products of the plant. It is estimated that 125,000 workers in the Ford plants have given 200,000

⁴ Warne, C. E. and Goddie, N. E., "Eleven Years of Compulsory Investigation of Industrial Disputes in Colorado," *Journal of Political Economy*, October, 1927.

other jobs to outside industries. A strike at an automobile plant, if continued for some time, will result in cancellations of orders to the steel mills supplying the auto manufacturer, and the number of steel workers will be reduced. The employment of the tire workers is similarly imperilled because the automobile manufacturer whose work has stopped for the strike has no need for the tires. The railroads, the bulk of whose freight may be composed of automobiles and parts, must lay off engineers and brakemen and helpers because there are no shipments from the automobile company. And so, also, the corner grocer and butcher and apparel shop owner feel the result of reduced employment and diminishing purchases in a score of cities where are located the mines or factories which produce the raw materials or semi-fabricated products which go into the making of the automobile at the plant tied up by the strike.

Effect of strikes upon production. The major obvious reverberation of strikes manifests itself in the production end. This is contingent upon the type of industry. In 1935 the milk strike in Wisconsin caused acute distress in New York and Chicago. The Pennsylvania coal strikes caused much inconvenience among consumers, and the state government was ready to step in and stop the strike by force when an agreement was reached. The government still reserves the right to protect vital industries from strikes, for the welfare of the people and the welfare of the country are synonymous. In fact, there is seldom a long strike in a major industry in which the state or federal government is not called in by either the striking body or the factory owners. As an example of this, when the Remington Rand Company made preparations to move its plant from Syracuse, New York, to some other location, both the labor union and the city authorities were thrown into great consternation. They resorted to every means to stop the "walk out" by the company on the strike. One step was to exert pressure through Remington Rand's biggest single buyer, the United States government. Labor men began calling on gov-

ernment purchasing agents. The Walsh-Healey Act, giving the government power to withhold contracts from bidders not conforming to approved labor practices, was cited. Stopped from moving out the company was in a precarious position, and the controversy became unduly bitter, with economic losses on both sides.

It is indeed difficult to estimate accurately the economic and social outcome of strikes. The clashes seem endless. As a result of strikes, however, the general trend is toward shorter working hours, higher prices for consumer goods, and higher wages. This trend in the past has moved in a circle, and the same problems may appear from age to age, from periods of prosperity to periods of depression.

To be sure, the first visible effects of the strike manifest themselves in the locality where the strikers throw down their tools. The curtailment of production is tantamount to decreased production of wealth, but what the community first feels is the loss of the worker's share of it which previously went into his pay envelope. No matter whether workers or employers are at fault, when payrolls are ended, the public at large must share the burden. As Chief Justice Hughes recently pointed out, "What these workers lose in wages the taxpayers are called upon to pay."⁵

Increase in strikes means an increase of applicants for relief. The best recent general example of the effect of strikes upon the community was the "sit down" strike of the United Automobile Workers at Flint, Michigan, in January, 1937. According to the Public Relief Commission, the number of families on relief increased from 2,500 to more than 7,800 within five weeks. On January 5, with a normal case load, the relief office received 29 applicants, a fourth of whom were factory workers. On January 11, applications numbered 82; and a few days later, 247. Then on Monday, January 25, the number reached 712.

⁵ *West Coast Hotel Co. v. Parrish*, 300 U. S. 379 (1937).

The bill for unemployment relief mounted at the rate of about \$10,000 per day during the strike, and was met out of the deficiency appropriation made by the legislature to carry the state relief program for the current fiscal year. As a result of the strike, there was a need for another deficiency appropriation for relief for the remainder of the year.

Effect of strikes upon the worker. If the striker has merely himself to support, the consequences are not of as great importance to the community as when the striker is the head of a family with dependents. In either event the relief rolls are increased, unless the union pays benefits sufficient to support the striker to the extent of his needs. However, if the union calling the strikes is financially able to reimburse in whole or in part the lost earnings of its members, the strike very often ends employment also for many workers who are not members of the union and who do not receive benefits payable to union members. Moreover, earnings are not lost merely to the workers of the closed plant; as has been pointed out, other wage earners are affected. If the strike is protracted, the continued decrease of purchases by the strikers at the local stores will result in lay-offs of clerks and other workers who normally supplied the needs of the strikers. Thus the Associated Press estimated that the Chrysler strike (1937) cost Detroit stores \$6,000,000. It is not improbable that merchants have reduced their sales force and curtailed their delivery departments in an attempt to compensate for this unexpected loss in sales and profits. Such reduction in employment may become widespread and affect every field of commercial enterprise and professional activity. During the prolonged strike in the anthracite fields, miners deferred calling in physicians when illness came to the family, depending upon homemade remedies. Thus, diminished incomes of doctors were coupled with inability to collect fees already due from the strikers. The inability of strikers to pay installments due to stores resulted in the replevying of automobiles, household goods, and other articles, which not only deprived miners and their families of ac-

customed comforts, but threw upon the market an abundance of repossessed merchandise which demoralized markets and brought in its wake many bankruptcies.

Social consequences of a strike. But the consequences to the community cannot be measured merely in terms of money; of more vital significance is the psychology of the striker, the sudden disruption of the normal life of the community, the destructive elements which characterize most strikes. Thus far we have referred to strikes in manufacturing plants, which may not inconvenience the daily routine of the average citizen. But strikes of railroad workers, street car crews, stevedores, or taxi drivers not only disrupt transportation methods, but bring more serious distress in stopping the delivery of foods; children and the ill have suffered through occasional interference with the milk and hospital supplies. Strikes in public utilities deprive the community of water, light and heat, with resultant suffering and disease. Strikes of elevator operators, even if peaceful, bring discomfort and hardship.

Strikes foster malice in the community. This is not all; the community suffers when bitterness and ill-feeling arise between strikers and non-strikers who were friendly and neighborly before, and it takes long to heal the mutual suspicions and resentments between worker and employer. Capital long ago realized that discontented workers were not highly productive; and it was probably good business sense more than altruism that led far-seeing men like John D. Rockefeller, Jr., to attempt "industrial plans" which would bring together in harmonious discussion leaders of the miners in Colorado and managers of the mines. Since that time labor has rejected such "company unions" and has obtained far greater concessions through their independent organizations.

The observations above are based upon the assumption that with the settlement of the strike the strikers will return to their accustomed employment. This is not always true; strikes have occasionally resulted in the removal of plants, thus leaving the

strikers permanently jobless and the community facing complete paralysis in commercial activity. A recent example was the closing of the Remington Rand plants in several cities; and while in this instance the National Labor Relations Board has found that the employer was actuated by a disregard for the rights of labor, it would not be difficult to find other employers who really were forced to end operations through actual inability to meet the demands made by the strikers.

The consequences of a strike are economic, sociological, and political. Thus it is evident that the consequences to the community are not only economic but sociological and political as well. The loss of wages, the larger relief rolls, disruption of business, lessened production of wealth: these comprise the economic phase. Contempt for law, bitterness among neighbors, hatred between classes, dangers to life and health; these are the greater sociological evils. The corruption of public officials and the opportunity for subversive elements to play upon the fears of employers who in turn play upon the public mind by accusing the worker of inculcating foreign "isms": these are the political aspects which endanger the American community.

The question of civil rights. The question of civil rights and the degree to which they are violated is a controversial subject, probably because the question of civil rights has been and still is in the minds of some social thinkers, a hypothetical one. However, for the purpose of this study we must assume that civil rights in the United States are fixed and unchanging, except through legal process.

We rely upon constitutional guarantees, specifically and concretely drawn up for the purpose of enumerating as well as guarding civil rights. In the "Bill of Rights," the first ten amendments to the United States Constitution are what may be listed as positive rights. Briefly, they are (a) freedom of religion, (b) freedom of speech, (c) freedom of the press, (d) freedom of peaceful assemblage, (e) freedom of petition,

(f) freedom to bear arms, (g) freedom from military quartering, (h) freedom from search or arrest without due process of law, (i) the right to a fair and speedy trial under due process of law, and (j) freedom from unusual or cruel punishment. These are regarded as inalienable constitutional rights. Are they always observed? Do the instruments of government sometimes aid in their violation? The issue of freedom of religion seldom comes up in strikes though it may be worthy of notice to mention the fact that sometimes in "criminal syndicalism" trials the prosecuting attorney will go to great length to attempt to prove that the defendant is an atheist and thereby prejudice the "twelve men of his peers."

Restrictions on and interference with rights. These rights or liberties are subject to many restrictions at any time. Some of these rights are necessary to the carrying on of ordinary societal functions; others are merely baseless taboos and mores which have crystallized into legal form. With the limitations on civil liberties we are not concerned here, because they exist even in normal times. We shall, however, consider the marked decrease in scope of civil liberties due to the emotional tension and consequent lack of tolerance that inevitably accompanies any important strike.

That civil rights are interfered with at times of great emotional stress, such as a war or an important strike, is nowhere denied. Even the persons who advocate strict measures of censorship and repression in the name of "Americanism" do not deny that they are thereby depriving persons of their civil rights. They seek rather to justify this invasion as a necessary step to prevent greater inroads on the same rights. This reasoning is not confined to vigilantes and minor officials but is found even among persons of high station entrusted with the duty of guarding these rights. An excellent example of this is the report of the Lusk Committee of the New York State Legislature, which under stress of the strikes of 1919 recommended among other things that a special certificate of character be required of teachers because "no person who is not

eager to combat the theories of social change should be entrusted with the task of fitting the young and old of this state for the responsibilities of citizenship.”⁶

Denial of right of assembly in time of industrial disputes. In most cases the deprivations of civil liberties are actuated by a sincere though misguided determination to preserve institutions that a judge or jury think necessary to guarantee liberty. In other cases, however, no such high motives are present. In the steel strike of 1919, the Commission of Inquiry for the Interchurch World Movement found that “the denial of the right of assembly is a fact concerning which no doubt exists; it is freely admitted by the public officials. Their justification for the denial is that violence might have resulted if meetings had been permitted.”⁷ The Commission then shows that the fear of violence was not well founded. As to the real reason for these acts, the Commission pointed out that “often political candidates are themselves members of the mill management having power to discharge, but in any case the superintendent and foremen take an active part in the electioneering.”⁸ Company guards serve the company interest without even a pretence that their acts are also for the general welfare, and this is true even when they act as deputy sheriffs.

Of the two basic motives for restraining the exercise of civil rights which we have just discussed, the latter is the easier with which to deal. The purely venal action of public officials can be met by passing laws which severely penalize such action, by union political influence which may tend to neutralize the influence of the employer on local officials, and by an aggressive use of the very legal devices invented to curtail freedom. This type of violation of civil rights most frequently occurs through the illegal acts of law enforcement officers, especially

6 Joint Legislative Committee of the State of New York Investigating Seditious Activities, *Revolutionary Radicalism*, Vol. iii, p. 2343.

7 Commission of Inquiry, Interchurch World Movement, *Public Opinion and the Steel Strike*, p. 165.

8 *Ibid.*, p. 173.

deputized company guards. These can be offset by the threat of civil and penal court action for false arrest and imprisonment for assault. Similarly the writ of mandamus will serve to require a municipal official to issue a permit for a public meeting, if sufficient care has been exercised in drafting the request for the permit. Furthermore, the injunction, one of the most powerful weapons used to curb civil liberties, may also be used to prevent illegal infringements of the same civil liberties.

As long as the strike is localized and labor need only deal with the illegal or extra-legal actions of a few officials and private individuals, the above remedies may be effective. But when a really critical situation arises, only organized defense of civil rights stands any chance of success. At such times, besides the action of persons interested in the failure of the particular strike and the efforts of persons who are paid or controlled by the employer, practically the whole community takes sides; tension rises, and many people sincerely believe that civil rights must be held in abeyance during the "emergency." This situation is much more difficult to deal with than the first because it often involves legislation, and appeal to an impartial tribunal is impossible.

The widespread infringement of civil liberties during industrial struggles. The infringement of civil liberties is not entirely confined to those in sympathy with the employer in the industrial struggle. Much the same sort of tactics have been used at times by union "flying squads" and by union crowds. However, with the present weakness and lack of organization, these invasions of civil rights are sporadic and unimportant in the general picture. If the strength of labor continues to grow at the present rate, this may not continue to be the situation in the future; and we may have to consider more seriously this type of infringement of civil liberties.

As we have seen, embalming our civil liberties in the Constitution has not guaranteed them from infringement. The only method that will keep this infringement to a minimum is legislative action to resist any encroachment upon them and the

creation of a community in which there is a minimum of special privileges and economic maladjustments, for these situations are provocative of violence and lack of tolerance.

Lack of legal procedure for settling industrial disputes. To lack orderly procedure for settling industrial disputes is to condone "sit down" strikes and other untried techniques. The C. I. O.-sponsored "sit down" is but another method used by labor to bring to an end what the laborer believes to be an injustice. He also believes that the A. F. of L. has been too careless and has neglected his interest. Whether the A. F. of L. is moving too slowly or the C. I. O. too rapidly, remains to be seen. But we do know that the labor discord resulting from an inadequate policy has cost both industry and labor millions of dollars, not to mention the cost of social and political strife.

Throughout this chapter we have been dealing with the problems of industrial disputes; the economic and social need for, and rights of, unions; and the legal and judicial means of preventing and settling disputes. In general, we have spoken of industrial unrest as the result of unsatisfactory economic conditions.

The peculiarity of labor unrest. The unrest peculiar to labor has a quality all its own because the question of social justice and fair play is always a distinct issue. When labor attempts to organize a union and the employer expresses his opposition by planning its destruction, the laborer feels that he has gone beyond the limits of a fair fight and his resentment begins to mount. When he sees his economic condition reflected in his home and the insecurity of his family, often a spirit of hopelessness is born and the worker is ready for "outside" organization. Violence, when it comes, cannot be ascribed to any one cause, nor does it have its origin exclusively in the camp of either party to the dispute. It can be said however that when a strike takes place, labor unrest has reached the point of revolt, whether it be a peaceful, orderly affair, or disorderly and violent.

Recognition of labor's right to organize. We have also seen that both industry and the state have recognized the right of labor to organize, bargain collectively, and picket peacefully. We have, however, yet to see whether industry and the state will grant the results of these recognized rights. At the present time we are in that transitory period where we have admitted that labor has these rights, but we have not permitted labor to go all the way and realize on them. For some time both industry and labor have recognized that it is doubtful, if ever true, that the lowest wages and the longest hours are the most economical; but neither is the opposite of that proposition true. We have seen that there is danger in the absence of any restraining force and that the conditions of labor in any industry will be dictated by the meanest competitor. The employer who wishes to maintain good conditions in his factory may, and quite often does, welcome a force which will make it necessary for his competitor to come up to the same level. It is on this issue of fair competition and fair wages that industry and labor should not be abandoned to their own devices to work out an economic relationship. The reason for this is twofold: first, there is public interest to consider; and secondly, there is no assurance that either industry or labor will get justice when left to the economic pressure that may be exercised in a mining region or an industrial center like Detroit. Here, then, the state should establish minimum hours, wages, and conditions of labor. The state sometimes does and should establish and maintain boards of mediation and arbitration as well.

Stability is another economic advantage that would follow a workable agreement with an organization of workers. Labor cost should be established and stability of production could be determined during such periods of agreement. Another result would be the elimination of industrial guerrilla warfare. A union, of course, cannot compel its members to work, but its influence will be great when thrown on the side of stability and order. Demands and negotiations for changed conditions

will take place at times previously arranged, and there will be little if any likelihood of taking the employer by surprise and at a disadvantage.

When such a scheme works, there exists among certain employers, like the Endicott-Johnson Shoe Company, good will toward the unions. Under the most favorable conditions, such an employer refrains from doing anything to weaken the unions. At the other extreme there are unsympathetic and hostile employers whose opposition is almost open warfare. They would destroy unionism once and for all if they had the opportunity.

We might perhaps clarify labor and industrial difficulties if we understand that the trade agreement arrived at by employees and employers is the substantive law that governs the labor relation. Historically, the trade agreement has not been treated as a legal contract, but rather as an agreement that both parties could rely upon. All concerned agree on the basis of good will and mutual faith in each other to abide by the agreement during its specified duration. This is shown by the final report and testimony of the Commission on Industrial Relations: "Joint agreements, on the whole, are well kept. There is a constant increase in the sense of moral obligation on the part of both employers and unions. It is found that the unions tend more and more to punish by fines or other disciplinary measures, such infractions on the part of their members."⁹

The contract must be between the employer and the individual who does the work. In the past, courts have consistently taken the position that trade agreements were not contracts and were therefore not capable of being enforced by law.¹⁰ As a matter of fact, the contract is and always must be between the

⁹ United States Senate, 64th Cong., 1st Sess., Doc. 415: *Final Report and Testimony by the Commission on Industrial Relations*, Vol. i, pp. 119-128.

¹⁰ "There is on its face no consideration for its execution. It is therefore not a contract." *Hudson v. Cincinnati, N. O. & T. P. R. Co.*, 152 Ky. 711, 154 S. W. 47 (1913).

employer and the individual who does the work.¹¹ The union comes in for the purpose of reaching an agreement with the employer regarding the nature of this contract. The union could not contract to supply labor; the union does not labor, nor does it control labor in the sense that a similar group might control a commodity.¹² Labor belongs to the individual worker, and under our democratic system of government he may or he may not deliver it.¹³

11 In *Kemp v. Division No. 241*, 225 Ill. 213 (1912), coming before the Supreme Court of Illinois, Justice Cooke points out that "it is the right of every workman, for any reason which may seem sufficient to him, or for no reason, to quit the service of another, unless bound by contract. This right cannot be abridged or taken away by any act of the legislature, nor is it subject to any control by the courts, it being guaranteed to every person under the jurisdiction of our government by the Thirteenth Amendment to the Federal Constitution, which discloses that involuntary servitude, except as a punishment for crime, shall not exist within the United States or any place subject to their jurisdiction."

12 *Loewe v. Lawlor*, 208 U. S. 274, and *Coronado Coal Company v. United Mine Workers of America*, 268 U. S. 295, have sometimes been cited as cases where the courts have attempted to hold the individual members of the union liable for the lawless acts of its members. It is true they were held liable, not on the ground of contract, but on the application of the Sherman Anti-trust law. The court points out in the *Northern Securities* case, 193 U. S. 331, that "the Act declares illegal every contract, combination or conspiracy, in whatever form, of whatever nature, and whoever may be the parties to it, which directly or necessarily operates in restraint of trade or commerce among the several states." It is worth while emphasizing that the act states "every contract or combination." In an early case (*U. S. v. Workingmen's Amalgamated Council*, 54 Fed. Rep. 994) the court was careful to point out that "it is the successful effort of the combination of the defendants to intimidate and overawe others who were at work in conducting or carrying on the commerce of the country, in which the court finds their error and their violation of the statute." The *Coronado Coal Company* case turned more directly upon the interference with interstate commerce. "When the intent of those unlawfully preventing the manufacture or production is shown to be to restrain or control the supply entering and moving in interstate commerce, or the price of it in interstate markets, their action is a direct violation of the Anti-trust Act."

13 In the *Exchange Baking & Restaurant, Inc. v. Rifkin*, 245 N. Y. 260 (1927), Judge Andrews of the N. Y. Court of Appeals holds that a workman may leave his work for any cause whatever. He needs make no defense, give no explanation. Whether in good or bad faith, whether with malice or without, no one can question his action.

Legislation to end industrial disputes. The purpose of this chapter and the ones to follow is to show that legislation is a means to the end of eliminating industrial and labor anarchy; that through its agencies can be created boards to arbitrate and mediate for the purpose of establishing confidence on the part of both industry and labor; that there may be an orderly process of hearing complaints and grievances to meet changing social, economic, and political conditions.

Finally, we might as well admit that the interest of industry and labor is not in all instances identical. In our present industrial state it would perhaps be farther from the truth, on the other hand, to say that their interests are diametrically opposed; yet neither statement is absolutely true, and perhaps that is why there are such positive and at the same time contradictory views on the subject. We may not have to the same degree the "social classes" that exist in other countries, but we still have economic classes. With these differences of opinions and interests existing between classes, it would seem logical that the state through legislation should work out the rule or formula to equalize these differences. In time, industry and labor will learn to respect each other's interests and to adjust their differences according to the laws laid down by the state. Such an idea is stated clearly by Frederick W. Taylor: "More than all other causes, the close intimate cooperation, the constant personal contact between the two sides, will tend to diminish friction and discontent."¹⁴

Laws of temporary and permanent nature. During 1935, Congress enacted some laws of a temporary nature, designed primarily to meet economic conditions resulting from the depression and amendments were passed to overcome constitutional objections to measures of this type already enacted, as well as laws to take the place of those declared unconstitutional by the Supreme Court. Congress also inaugurated a program

¹⁴ *Principles of Scientific Management*, p. 143.

of permanent legislation, including the Social Security Act and the National Labor Relations Act.¹⁵

The National Labor Relations Act and labor. From the standpoint of labor, the National Labor Relations Act¹⁶ was probably the most important law passed by the Seventy-Fourth Congress. By the enactment of this law, the United States declared its policy to be one of encouraging the practice and procedure of collective bargaining, and of protecting the rights of the workers to organize for the purpose of negotiating the terms and conditions of their employment. The Act makes certain activities of the employer "unfair labor practices" and the National Labor Relations Board after a hearing and due process has the power to order an employer to "cease and desist" from such practices. If the disputing parties can reach no agreement, individual bargaining or a strike may be resorted to. The Act definitely provides that no restrictions can be placed on the right to strike. It becomes the duty of the Board to attempt to adjust labor disputes, to guarantee the rights of collective bargaining, and to see that the employer does not engage in unfair labor practices.

The Wagner Act and industry's attitude toward it. The Wagner Act has been upheld by the United States Supreme Court, yet industry contends that it is "unfair and biased in favor of labor." During 1936 and the first four months of 1937, eighty-three applications for injunctions were served against the Act, all of them denied. Not one of those denied was reversed by the circuit court of appeals, but in the meantime injunctions were granted in twenty cases. The average delay up to March 21, 1937, win or lose, was a little over seven months per case, which put the Act off to a bad start. Legislation to be effective should have the support of those concerned, at least to insure a fair start.

¹⁵ See Chapter V above for a complete treatment of The National Labor Relations Act.

¹⁶ U. S. Stat. at Large 457, 29 U. S. C. A., Sec. 151-166.

Organized labor feels very strongly about this, and having failed to secure these rights by law is determined to obtain them by its economic strength. This is an industrial "sore spot" and will be in all likelihood the cause of much future trouble unless a remedy is found. Such remedy would involve the complete recognition of the rights of all who constitute the human force in industry. There can be no responsible relationship where one industrial group attempts to deny to another group the exercise of a legal right. As corporations become necessary in the formation of the industrial enterprise of trade, unions have also become necessary in order to satisfy the desires of working men and women to organize for mutual advancement and protection. As ownership changed from small, individually-owned plants to large, stock-owning corporations, their working men and women want to exercise the right to form their own trade unions. Industry should grant to labor that which it has regarded as indispensable to itself; that is, recognition of the fact that the day of individualistic efforts and action has largely passed and that a new day of collective action is here.

Unions' rights and responsibilities. In the past labor has been lectured to by both industry and the courts as to its rights and duties. It has been kept subservient by legislation passed through the pressure of industry and interpreted by the courts as "due process," freedom of contract, etc. If labor is given the right to organize freely and the right to bargain through representatives of its own choosing on wages, hours, and working conditions, it will then have to assume the responsibility of discipline, sacredness of contract, efficiency of production, and elimination of waste itself. It will no longer be forced to depend upon industry for everything but brawn. With each side recognizing the full rights of the other and respecting those rights, benefits and advantages, there should come to industry, to the worker, and to the general public an intelligent and cooperative program.

The turning point in social legislation. But the turning point in social legislation was reached in 1937 when the United States Supreme Court found a Washington state minimum wage law, the Wagner Act, and the Social Security Act to be constitutional. These decisions are historic and their implications will no doubt be far-reaching, not only in the field of minimum wages, maximum hours, and general security legislation in the states, but as they reflect the position of the court for future legislation.

Minimum wage laws in the states. The history of the Washington state minimum wage decision on that legislation is both important and interesting.¹⁷ More than twenty-three years ago the states of Washington and Oregon enacted minimum wage legislation for women and children, and the State Supreme Courts of both states subsequently upheld the laws as valid. In 1918 Congress enacted a somewhat similar law for the District of Columbia. After being sustained in the District Supreme Court and declared invalid by the District Court of Appeals, the case reached the United States Supreme Court fourteen years ago and was declared unconstitutional by a five to three decision, Justice Brandeis not participating. Cases involving the laws of Arizona and Arkansas similarly reached the Supreme Court and were likewise declared unconstitutional on the strength of this ruling case—*Adkins v. Children's Hospital*.¹⁸ Then New York and later Ohio enacted minimum wage legislation that took cognizance of the court's objections to the District of Columbia law. The New York court by a majority of one held the New York law invalid and the Supreme Court sustained the lower court, five to four. In the meantime the Ohio Law, similar to the New York statute, was upheld by a three-judge federal circuit court in an unanimous opinion.

¹⁷ *Parrish v. West Coast Hotel Co.*, discussed in Chapter I.

¹⁸ 261 U. S. 525 (1923) discussed in Chapter I.

Uncertainty of minimum wage laws. Such opinions placed the power of minimum wages and hour regulation for women and children in a complete state of legalistic uncertainty. The hands of the states were obviously tied by individual jurists whose points of view were so manifestly at variance with what a majority of the people in the states concerned wanted and could do, if only they had judicial backing.

This position left the Supreme Court and even the federal judiciary exposed not only to the attacks of labor, but also to the criticism of social thinkers generally. Now with the decision in the Washington minimum wage law case, Chief Justice Hughes with the assistance of Justice Roberts has attempted to lead the court out of an untenable and perilous position. They now admit that the court was wrong in the District of Columbia decision, wrong in the light of its own previous and subsequent decisions. This decision has affirmed not only the right of the states to enact minimum wage and maximum hour legislation for women and children, but has suggested indirectly the possibility of extending such regulation. As the Chief Justice points out, "The argument that the legislation in question constitutes an arbitrary discrimination because it does not extend to men is unavailing. The court has frequently held that the legislative authority acting within its proper field is not bound to extend its regulation in all cases which it might reach." The way now seems open for the states to act in the matter of the regulation of minimum wages and maximum hours of labor in such a manner as the conscience of the people and the realities of a state and the time may dictate. The decision marks a great day for labor—a great day for social legislation and legal control as an agency attempting to equalize the differences of men.

The second opinion handed down by the court in regard to the Railway Labor Act is of special interest to labor because it offers an opportunity to compare the position of the court in the two cases dealing with the question of industrial relations. It was a unanimous court which affirmed two years

ago, in the case of the N. R. A., that the federal government has no authority under the Constitution as it stands to regulate wages and hours in "intrastate" business. It is now a unanimous court which affirms in the case of the Railway Labor Act that the federal government has clear authority to regulate the industrial relations of a carrier engaged in "intrastate" business.¹⁹ The distinction between "intrastate" and "interstate" is sharply drawn, and the very unanimity of the court in both cases stresses the importance of the distinction. Justice Stone delivered the unanimous opinion for the court and in doing so he stated certain most liberal views with reference to the constitutional relations between employer and employee. These statements seem unusually broad when we remember they were signed by the four Washington case dissenters. The court points out that: "Both the statute and the decree are aimed at securing settlement of labor disputes by inducing collective bargaining with the true representatives of the employees and by preventing such bargaining with any who do not represent them . . . There is no want of capacity in the court to direct complete performance of the entire obligation: both the negative duties not to maintain a company union and not to negotiate with any representative of the employees other than respondent (organized railroad labor) and the affirmative duty to treat with respondent."

The N.L.R.B. and collective bargaining. On April 12, 1937, the United States Supreme Court declared the National Labor Relations Board and its functions to be constitutional.²⁰ The

¹⁹ The Va. Railway Co. v. System Federation No. 40, 300 U. S. 515: on writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit to review a decree enforcing, with modification, an order of the N. L. R. B. which . . . required the employer to cease domination of and financial support to a company union in violation of the N. L. R. A.

²⁰ (a) The Associated Press v. N. L. R. B., 301 U. S. 103.

(b) N. L. R. B. v. Jones & Laughlin Steel Corp., 299 U. S. 534.

(c) N. L. R. B. v. Friedman-Harry Marks Clothing Co., Inc., 299 U. S. 535.

(d) N. L. R. B. v. Fruehauf Trailer Co., 299 U. S. 534.

(e) N. L. R. B. v. Penn. Greyhound Lines, 302 U. S. 676.

scheme of this Act, which is too long to be quoted in full here, may be briefly stated. The first section sets forth findings with respect to the injury to commerce resulting from the denial by employers of the right of employees to organize and from the refusal of employers to accept the procedure of collective bargaining. There follows a declaration that it is the policy of the United States to eliminate these causes of obstruction to the free flow of commerce. The Act then defines the terms it uses, including the terms "commerce" and "affecting commerce" (Sec. 2). It sets forth the right of employees to self-organization and to bargain collectively through representatives of their own choosing (Sec. 7). It defines "unfair labor practices" (Sec. 8). It lays down rules as to the representation of employees for the purpose of collective bargaining (Sec. 9). The Board is empowered to prevent the described unfair labor practices affecting commerce, and the Act prescribes the procedure toward that end.

The right to an appeal from an order of the Board. The Board is authorized to petition designated courts to secure the enforcement of its orders. The findings of the Board as to facts, if supported by evidence, are to be conclusive. Any person aggrieved by a final order of the Board may obtain a review in the designated courts with the same procedure as in the case of an application by the Board for the enforcement of its order (Sec. 10).

The Board has broad powers of investigation. Interference with members of the Board or its agents in the performance of their duties is punishable by fine or imprisonment (Sec. 12). Nothing in the Act is to be construed to interfere with the right to strike (Sec. 13). There is a separability clause to the effect that if any provision of the Act or its application to any person or circumstances shall be held invalid, the remainder of the Act or its application to other persons or circumstances shall not be affected, (Sec. 15).

Strikes and interstate commerce. A summary will perhaps provide the best means of indicating the change brought about by the National Labor Relations Act. Probably the greatest emphasis should be placed upon the feature of collective bargaining. The government, to justify the Act's application to both transportation and industry generally, recites the interference to the free flow of interstate commerce arising from strikes; as the result of the denial by employers of the right of employees to organize, the Act also recites as an additional obstruction the refusal by employers to accept the procedure of collective bargaining.²¹

The Board's power to issue orders to cease and desist. The Act makes certain activities of employers "unfair labor practices", especially when such activities interfere with the workers' right of self-organization for the purpose of collective bargaining. The Act empowers the National Labor Relations Board after hearing and due procedure to order an employer to "cease and desist" from such practices. The federal circuit courts are directed to enforce the orders of the Board. The Board has also the power to order the reinstatement of employees discharged because of union membership or activities, as it did in March of 1938 in the case of Remington Rand, Inc. In that case the employer appealed from an order of the Board, as he had a right to do under the Act, to a federal circuit court. The court found that the facts set forth by the Board were supported by evidence and sustained the order of the Board.

Unfair labor practices. A very important consideration is the list of activities disclosed to be "unfair labor practices":²²

²¹ The Act states in Sec. 1 that the policy of the United States is to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by practicing the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing for the purpose of negotiating the terms and conditions of their employment.

²² *Ibid.*, Sec. 8.

(1) it is unfair to interfere with, restrain, or coerce employees in the exercise of their rights of self-organization; (2) it is unfair labor practice to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it; (3) it is unfair labor practice in regard to hire or tenure of employment by discrimination to encourage or discourage membership in any labor organization; (4) it is also an unfair labor practice for an employer to refuse to bargain collectively with the representatives of his employees.

When one subjects the above-mentioned "unfair" labor practices to a careful study, it becomes obvious that they were aimed at the organization of company unions by employers, yellow-dog contracts, etc.

The Act and the right to organize. The Act attempts to give a real protection to the workers in the exercise of their right to organize, bargain, and protect themselves collectively. To safeguard these protections the Act calls for special administration agencies to carry it into action. The drafters of the Act did not rely upon the usual machinery of law enforcement to do the job. Up to this time the government had been at times interested in keeping the worker on his job. Now, however, the government promises to protect every wage-earner (covered by the Act) from discriminatory treatment. Any worker who believes he has been dealt with unfairly because he joined a union or was active in the organization of labor has a right to have his case investigated. If he is successful in establishing his claim, the government undertakes to secure his reinstatement.²³

The N. L. R. B. and the Republic Steel, Inc. The decision of the National Labor Relations Board against Republic Steel, Inc.,²⁴ is a good example of how this law safeguards the

²³ The federal circuit court, at the request of the National Labor Relations Board ordered Remington Rand to reinstate some four thousand employees. Some had been discharged from the plant for almost two years.

²⁴ Decision of the National Labor Relations Board v. Republic Steel, Inc., April 9, 1938.

worker, and of how the Board works. In that decision the Board ordered the corporation to take the following steps: (1) to cease and desist from interfering with self-organization of its employees; (2) to disestablish completely as collective bargaining agencies the so-called "plan of employee representation" and its successors at the five plants involved, as well as a joint "central council of employee representatives"; (3) to reinstate twenty-seven named employees allegedly discharged for union activity with back pay, less other earnings, for the period May 4 to May 27, 1937; (4) to reimburse employees of the Canton Tinsplate Mill and the Massillon Works for wages lost between May 19 and May 25 due to the shut-down of these plants; (5) to reinstate with back pay from April 8, 1938, less other earnings, upon their application, all of the estimated five thousand employees who struck on May 25 and thereafter, discharging other employees hired after the strike if necessary and giving preferential positions on employment lists without discrimination to any who cannot be reinstated because of reduction of working forces; (6) to post notices of compliance in the five plants for sixty days.²⁵

Besides these specific orders made by the Board, it also ruled that Republic Steel, Inc., had violated the Act through its domination of employees' organization in its Ohio plants and through the discriminatory discharge of twenty-seven workers at these plants; by its shutdown of the Canton Tinsplate Mill and the Massillon Works to discourage union organization; through its acts of vilification and espionage of the Amalgamated Association of Iron, Steel, and Tin Workers and the S. W. O. C.; by its attempt to turn civil authorities and business interests against the union through support of the

²⁵ It is interesting to note that the decision excludes from the relief order seven workers named in the S. W. O. C. complaint on the ground that local law enforcement agencies found them guilty of the use of explosives and the malicious destruction of \$300 worth of property. The Board, however, declined to accept the company contention that relief should not be granted other strikers who pleaded guilty to lesser offenses incidental to the strike, holding that the company was guilty of far more serious acts of violence.

Massillon Law and Order League and so-called "back-to-work" committees in three plant cities; through a donation of tear and vomiting gas to the city of Massillon; and finally through activities relating to the fatal shooting of three members of a strike group and the wounding of an undetermined number of the group by gunfire and gas fumes.

The success of the N. L. R. B. The National Labor Relations Board with its office and agents has been set up to carry out this law. The job of the court is to enforce the orders of the Board and to hear appeals therefrom. The success of this body, which was established late in 1935, is indicated by the number of cases that it has settled by agreement of both parties to the dispute.

Out of 12,485 cases handled, the Board reported 9,150 have been closed; and of that number 5,081, or 55.5 per cent, were closed by agreement. The cases handled since the Board began work involved 3,247,678 workers up to January of 1938. Comparatively few of the closed cases required Board decisions and many never reached it. According to the statistics, 1,410, or about 15 per cent, were dismissed by the Board or regional directors; 3,186 cases, or about 24 per cent, were withdrawn by the petitioning unions; and only 473 cases, or about 5 per cent, were closed by compliance with Board decisions.

Of the closed cases, 1,441 involved strikes, the Board settling 1,113 of these, or about 77 per cent of the total. Because of Board action some 519 strikes were averted, about 177,000 workers have been reinstated after strikes or lockouts, and the report says 8,610 of them were reinstated after "discriminatory discharge."

During the little more than two years of activity of the Board, 1,069 elections have been held to determine what agency, if any, should represent the workers in collective bargaining negotiations. In these elections a total of 385,736 valid votes were cast.

The N. L. R. B. and the employees' union affiliations. An analysis of the causes of the complaints shows that 3,977 of

all the cases to date were based on charges of employer discrimination against workers because of their union affiliations or activities, while 2,849 cases were based on charges of failure of the employer to bargain in good faith with the chosen representatives of the employees.²⁶

While the N. L. R. B. has often been accused of increasing industrial strife, the above report shows that such accusations are far from the truth.

Changes brought about by N. L. R. B. The outstanding changes made by the National Labor Relations Act are in the law of collective bargaining. These changes are mostly restrictions on right, long accepted as being peculiar to the employer. Among them are the following: (1) the employer can no longer hire and fire in such a way as to interfere with the organization of his workers; he can no longer refuse to hire a man because he belongs to a union, fire him for the same reason, nor use the yellow-dog contract; (2) the employer is restricted in his right to refuse to deal collectively with his employees; and (3) the employer is restricted in his right to organize a company union—he must keep out of his employees' organizations, whatever they are.

Since the Supreme Court decisions sustaining this Act, it has been applied to many of America's large industries, including steel, automobile, and coal. These industries have modified long-standing anti-union policies. While this Act covers only interstate employers, yet by June of 1937 five states had adopted similar laws covering intrastate employers.²⁷ This Act may prove to be the beginning of a significant experiment in government encouragement of collective bargaining.

²⁶ *The Report of the National Labor Relations Board*, March 26, 1938.

²⁷ New York, Ch. 443 of the Gen. Laws.

Mass.	"	436	"	"	"	"
Penn.	"	294	"	"	"	"
Utah	"	55	"	"	"	"
Wisc.	"	51	"	"	"	"

See also, analysis of Acts in *Monthly Labor Review* for October., 1937, p. 854.

Legislation regulating intrastate work. New York State offers a good example of state legislation which attempts to do for labor engaged in intrastate work what the National Labor Relations Act has done for labor engaged in interstate work. New York State has in effect two new major instrumentalities designed to promote peace and equity between employers and employees, a State Labor Relations Board and a State Board of Mediation. The two laws which created these boards became operative on July 1, 1937.

The State Labor Relations Board is designed to assure employees full freedom in bargaining. The State Labor Relations Act is patterned after the National Labor Relations Act, but is not identical with it. One difference lies in the fact that the state permits its Board to investigate a controversy upon request of an employer as well as of an employee or a group of employees.

In a statement of policy the State Labor Relations Act sets forth that its purpose is to aid in bringing about equality in bargaining between employers and employees. The Act forbids what are termed "unfair labor practices." It bars labor spies, company unions, discrimination for union activities and intimidation by employers. Provision is made for elections to determine bargaining agencies. The courts are empowered to issue writs to enforce rulings of the Board and to handle appeals.

New York State Mediation Board. The State Mediation Board, created under a separate law, has the main purpose of trying to prevent strikes or of ending them once they start.

This legislation, both by the nation and by the states, attests to the interest of the public in preventing strikes or shortening their duration. Today due to the development of large-scale production and the growing complexity of the social order there has been an increase in the number and disastrousness of strikes and labor disputes generally. Society in general often suffers more acutely from the stoppage of production and the disorder which often accompanies strikes than do either the

employee or employer. Hence the demands for government intervention to minimize or put a stop to them.

The Wagner Act and public interest. The Wagner Act recognizes the interests of the public, labor, and industry. It seeks to relieve the public of costly labor disturbances through eliminating the deep-rooted unrest brought on by employers who are determined to defeat the organization of their workers. In labor's behalf it seeks to make it unnecessary for workers to undergo the hardships and dangers of strikes in support of a right recognized for decades by courts, by party platforms, and by legislatures. The prohibition of unfair labor practices imposes no undue hardships on violation, and to industries voluntarily complying with the law it affords protection against the sweatshop tactics of unscrupulous competitors.

CHAPTER IX

EMPLOYEE REPRESENTATION AS A MEANS OF PREVENTING IN- DUSTRIAL DISPUTES

Employee representation plan the employers' idea. In employment representation we should keep in mind that we are dealing with the employers' idea of industrial relations; it has usually been the employers' concept of industrial democracy. It means the degree of participation which he is willing to give his workers in the management, government, or control of his business. Actually, this system covers many plans with many degrees of representation, varying all the way from those plans which indirectly provide for formal channels where workers' representatives present their grievances or minor questions or problems to those plans which call for representation on the board of directors or even give the workers full control of the business.

The plan in non-union industries. Most employer representation systems are found in non-union industries and are restricted to the workers in a given business firm. Usually, too, they have been initiated by the employer who limits the negotiable area as well as the immediate terms of employment. A number of names have been used by different companies to identify employer representation plans, the ones listed by Daugherty¹ being shop committees, work councils, work committees, employees' associations, industrial assemblies, company brotherhoods, and industrial democracies. Organized labor, for the most part, thinks of them as company unions.

As was said above, there are many systems used, but all systems have some kind of a committee system. In some companies, there are many specialized committees, each devoted to some phase of industrial relations, such as wage rates, working conditions and saving plans. In other companies, the committees

1 Daugherty, Carroll R., *Labor Problems in America* (1936), p. 773.

are joint affairs, made up of an equal number of workers' representatives and company men appointed by the management. Still other systems use committees made up only of employees who bring up grievances to the management when the situation arises. The advantage, if such there be, of the committee system lies in its capacity for adaptation to various situations and difficulties, and in the greater opportunity it gives for free expression of opinion by the employees.

The Leitch Plan. There is another plan known as Industrial Democracy or the Leitch Plan which is much more complicated than the committee system. The idea was to model the employee representation plan after the structure of the United States government. Each business institution was to be organized into a little democratic state. Under the system the cabinet is composed of the higher plant executives and presided over by the president of the company; the senate is made up of lower executives who are directly in charge of the workers; the house is made up of representatives chosen by the workers' ballot.

The system has not worked out well and has actually proved to be much less popular than the committee organizations. In the Leitch Plan, the procedure is much too formal and complicated for harmonious adjustment. Probably the greatest difficulty is the absolute veto power of the cabinet.

The Industrial Representation Plan as means of establishing a labor policy. Industrial representation plans have been and still are used with a limited degree of success in this country. Perhaps a short résumé of the history leading up to the strike in the Colorado mining industry in 1913, and the strike itself out of which the Industrial Representation Plan grew, will facilitate a perspective regarding conditions at the time the plan came into being and the need for it.

In 1900 was organized the first local of the United Mine Workers of Colorado. The following year a district organization was formed with fifteen locals, only to be eliminated early

in its existence by "employer-inspired official violence."² However, the United Mine Workers continued secret organization activities, and in 1903 a revived district organization, District 15, came out in the open with a public letter to Governor Peabody in which a list of the coal miners' grievances was recited. This began a campaign which developed into a year-long strike, 1903-1904, in the Trinidad district against the Colorado Fuel and Iron Co., a Rockefeller concern, the Victor-American Fuel Co., and several lesser companies, and at the same time strife developed in the metalliferous mining fields in the Cripple Creek and Telluride Districts. The Coal Miners' organization collapsed in the struggle.

The success of the strike of 1904. In 1910 the United Mine Workers again approached the Northern Colorado coal fields and called a strike April the first, and failed. Then in 1913 they tried the southern Colorado field, the most important coal section in the state.³ This time they were successful. The union grew and in September, 1913, a convention of Colorado and New Mexico locals decided to go on strike unless the employers agreed to deal with the union. Their demands related to wages, hours, enforcement of mining and labor laws, and recognition of the union. They were: (1) recognition of the union; (2) a 10 per cent increase in tonnage rates and a day scale to correspond with the rates in Wyoming; (3) an eight-hour day for all labor in and around coal lands and at coke ovens; (4) payment for all narrow and dead work, which included brushing, timbering, removing falls, handling impurities, etc.; (5) the election of check-weighmen by the miners without the interference by company officials; (6) the right to trade at any store they wanted and to choose their own boarding house and doctor; (7) the enforcement of the mining laws and the abolition of the Company guard system. The unionists

² United Mine Workers of America, *Proceedings of Twenty-fifth Annual and Second Biennial Convention* (1916), p. 100.

³ *Idem.*

were insistent upon the establishment of a closed shop, with a written trade agreement specifying the terms of employment and providing for the adjustment of grievances. These demands were refused and no attempt was made to avert the strike, set for the 23rd of September, not even to the extent of granting the union a conference with the mine operators. The companies affected included the Colorado Fuel and Iron Co., the Rocky Mountain Fuel Co., the Victor-American Fuel Co., and a number of smaller operators; these companies provided subsistence for 30,000 people, most of them Greeks, Slavs, Italians and Mexicans. With the refusal even to confer regarding the demands, there ensued a struggle which for bitterness and violence has few equals in the history of industrial relations. Nine thousand miners answered the strike call on the twenty-third and marched with their families and possessions out of the company camps to establish tent colonies on land adjacent or near mining properties. Armed guards were imported and because of repeated violences Governor Ammons granted the mining operators the request for troops; the entire National Guard of Colorado was ordered to Las Animas and Huefano Counties on October 26, to occupy a front of 120 miles. There was an early attempt at impartiality on the part of the militia, but by November 10 they were intimidating strikers and defending strike-breakers at all times. At the Governor's request, the Colorado Federation of Labor investigated the charges against the militia. These were found to be so serious the committee appealed to the United States Senators and Representatives of Colorado to bring about a federal investigation. One of the most serious and tragic violences perpetuated was the Ludlow massacre ⁴ of April 20, and the strike was brought to the attention of the whole country. The massacre caused the strikers to avenge themselves and Governor Ammons was forced to appeal to President Wilson to send federal troops because state forces were inadequate to keep order.

⁴ Yellen, Samuel, *American Labor Struggles* (1936), pp. 205-250.

Federal troops go to Colorado. Congressman Foster, chairman of the House Committee on mining, appealed to John D. Rockefeller, Jr., a principal stockholder in the Colorado Fuel and Iron Co., to intervene but Rockefeller refused.⁵ Secretary of War Garrison called upon all strikers, mine guards, and neutrals in the strike zone to surrender their arms to the federal troops. The federal commander prohibited the importation of strike-breakers and Wilson attempted mediation. This mediation proposal consisted of a "three year truce",⁶ which provided in the main for the enforcement of the mining laws of the state; the re-employment of striking miners not found guilty of violations of the law; a guarantee of non-intimidation of workers, either by the union or the mining companies; the posting of the current scale of wages; a grievance committee at each mine to consist of employees of the company, with no outsiders such as trade union officials; and a plan for the adjustment of grievances by a Commission to be appointed by the President of the United States as last resort. As a preliminary to this truce the miners were to waive any claim for a written contract or recognition of the union and for three years to desist from striking, picketing or in any way obstructing the working of any mine. The companies were to desist from employing mine guards and not to suspend the operation of any mine over six days without authorization by the Commission, which body was to be given power to impose penalties. This mediation measure was accepted by the mine workers but refused by the operators. Finally, on November 19, 1914, the Policy Committee of the strikers called on President Wilson who, regardless of the refusal of the operators to accept his plan, appointed a conciliation commission of three which was able to bring about the termination of the strike on December 10. In the meantime John D. Rockefeller, Jr., had been corresponding with W. L. Mackenzie King, formerly Minister of Labor in

⁵ *Chicago Recorder-Herald*, April 28, 1914.

⁶ "President Wilson's Plan for Peace in Colorado," *The Survey*, September 19, 1914.

Canada and later premier of Canada, and author of the Industrial Disputes Investigation Act of 1907. Mr. Rockefeller asked Mr. King for advice on "some organization in the mining camps which will assure to the employees the opportunities for collective bargaining."⁷

The plan of Mr. Rockefeller. Mr. Rockefeller believed the loss of personal relationship between management and men to be the most important problem in industrial relations, and the purpose of the plan which subsequently developed was to restore this personal relationship. J. R. Welborn, President of the Colorado Fuel and Iron Company,⁸ summarized the aims as follows: "the establishment of such direct relationship between managers of the company and employees as shall insure their confidence in the fair dealing of the company and shall bring to the company value received, so to speak, in the form of loyalty from the workers."⁹ He believed in the idea of a "representation in industry to include actual participation by employees in determining working and living conditions," and he defined representation in industry as "collective bargaining."

The need for such a plan lies in the fact that coal mining is an industry where disputes of real importance constantly arise out of the natural conditions of mining, such as its dangers, and the remote places where the miners must live. Because of these conditions, fairly unlimited authority has been given superintendents and foremen which has led to abuses of power and injustices unknown to higher officials. The men therefore need some means of appeal to higher officials.

The extent of the plan. Early in its formation the representation plan had varying features to meet varying situations in

⁷ United States Commission on Industrial Relations, *Report on the Colorado Strike*, George P. West, Chairman, Government Printing Office, Washington, D. C. (1915), p. 28.

⁸ For the Colorado Plan see Chapter I, *supra*, "The Problem of Industrial Disputes in Modern Industrial Society."

⁹ Selekmán, Ben M. and Van Kleeck, Mary, *Employees' Representation in Coal Mines* (1924), pp. 36-37.

the coal mines, iron mines, and among those employed in steel. However, in December, 1921, the plans were consolidated at Pueblo to include the following coal mines: the Trinidad district, which includes both mines and coke ovens in Las Animas County; the Walsenburg district in Huerfano County; the Canon district in Fremont County; the western district in Gunnison County; iron mines: the Sunrise district in Platte County, Wyoming; the Minnequa district, which contains the lime quarries and steel works in Pueblo County; and the Middle Division of the Colorado and Wyoming Railway. The Southern Division of the railway is included in the Trinidad district and the Northern in the Sunrise district.

Both Mr. Rockefeller and Mr. King believed that the lack of personal relationship between directing management and employees was the true point or origin of the bitter conflict of the coal strike in Colorado. To restore the personal relationships that existed in the days of small scale crafts in a company which employed 5,000 men in its mines, 7,000 in its steel works in Colorado alone, operated lime quarries and iron mines in another state, and a railway carrying both freight and passengers was obviously impossible. The "principle of representation" was the essence of the plan suggested. The idea was to apply in industry the mechanism of republican government in political life. Relationships between men and management were to be restored through representatives to be chosen by officials and employees. The plan, called the Industrial Representation Plan, was established in the coal mines of the Colorado Fuel and Iron Company in October, 1915, and in the Minnequa Steel Works in 1916. The machinery of the plan included two documents, the industrial constitution and the trade agreement.¹⁰ The constitution provided for the election of two or more representatives, at each mine, to serve for one year. These employee representatives from all branches of the company come together in an annual meeting with an equal number of company officials. In addition, district meetings were held every

10 Rockefeller, John D., Jr., *The Colorado Industrial Plan* (1916), pp. 63-94.

four months for the camps in each of the districts. At these conferences any matter which employees desire to have discussed can be brought up for consideration with representatives of the management. In each district four joint committees composed of equal numbers of employees and officials consider (1) safety and accidents, (2) sanitation, health and housing, (3) recreation and education, (4) industrial cooperation and conciliation. A critical analysis of these committees will be undertaken later on.

An assistant to the president of the company is responsible for industrial relations, but the president is the real administrator of the plan. The president has a personal representative, known as the "president's industrial representative" in every section of the organization.

Regarding the expenses of administration, it is interesting to note that the company agrees to bear all expenses, because "the promotion of harmony and good will between the company and its employees is essential to the successful operation of company's industries in an enlightened and profitable manner."¹¹

The trade agreement. The trade agreement is "an addition to the rights and privileges guaranteed the employees and the company in the Industrial Representation Plan." This agreement was to last until January 1, 1918, and to continue thereafter subject to revision upon ninety days' notice by either of the parties.¹² This agreement contained seven sections, four of which dealt with living conditions: (1) rent was to be charged at \$2.00 per room per month with a specified extra charge for electricity, no charge to be made for water for domestic use, except where the company must purchase it; (2) the company agreed to fence, free of charge, each house and the lot upon which it stood, and garbage would be removed free; (3) suit-

¹¹ "Industrial Constitution" in the Coal and Iron Mines of the Colorado Fuel and Iron Co. of Colorado and Wyoming, Sec. IV-11.

¹² Memorandum of Agreement between Colorado Fuel and Iron Co. and its employees in the coal mines and coke ovens in the state of Colorado.

able bath houses and social centers would be provided as rapidly as possible; (4) domestic coal and power would be sold substantially at cost to the miners. Three sections contained guarantees to maintain certain working conditions. Eight hours would constitute a day's work for all employees working underground and in coke ovens and nine hours for outside labor. All employees would be paid by check with no deductions except when authorized by them. An important section was devoted to "Wage Schedules and Working Conditions." No change affecting wages would be made without thirty days notice as required by the law establishing the State Industrial Commission.¹³ Present wages and working conditions were to remain in force without reduction and the management agreed to an increase if "a general increase shall be granted in competitive districts in which the company does not conduct operations. . . ."

The aim of the plan. The primary aim of the plan was to prevent disputes and to this end certain basic agreements were outlined as a *modus vivendi*. Both company and employees pledged themselves to a strict observance of mining laws. The management agreed to post the scale of wages in a conspicuous place near every mine. It further guaranteed to post at each property a list of the only offenses for which an employee might be dismissed without notice. Employees would have the right to hold meetings on company property and to purchase where they pleased. They might select check-weighmen as provided by law, and the company would grant the check-weighmen every facility to enable them to render a correct account of all coal weighed. One of the most important features of this section was the guarantee of non-discrimination. Union membership would not be a reason for refusing to employ a miner or for discharging him. Outside of this the company retained the right to hire and discharge whomever it chose.

¹³ Session Laws of Colorado (1915), Workmen's Compensation, Sec. 29.

Representatives' weakness. The representatives are men who work in the mines and who, as employees of the company, do not feel free to act in opposition to the company's interest in defense of fellow employees. The realization of this weakness at one time led employees to suggest the need for a general representative, paid by the employees, who would give his whole time to the work as does the president's industrial representative; a suggestion acceptable to the company, but the miners voted it down. They did not feel that an employees' representative would accomplish much for them and as they would be obliged to elect one of their fellow workers for the office, they felt that this also would continue a weakness of the present plan. The men felt "that their dependence upon company officials for a job makes equality as a negotiator impossible."¹⁴ The representative, according to the written plan, is a spokesman elected by the employees and paid by the company as one of its employees in coal mining. The company reimburses the representative for the time lost in duties definitely assigned by the company, and the problem introduced here lies in the fact that if he should take the initiative in investigating the grievances of fellow employees, or if he should act at the request of one of them, he must himself bear the loss of earnings. The employees have no treasury. The representative attends all meetings called in connection with the Industrial Representation Plan. He helps to choose members of joint committees and he may be chosen for this service. He may or may not be called upon by fellow employees to help in bringing their grievances before those bodies.¹⁵ What this proposes to do is to invite representatives of the workers into conference with executives. The representatives are channels of communication between management and miners, rather than partners or even advisers to officials in employment policies. Nevertheless, the right of conference is a distinct gain for the workers and, as Dr. Sele-

¹⁴ Selekman, Ben M. and Van Kleek, Mary, *Employees' Representation in Coal Mines* (1924), pp. 36-37.

¹⁵ Gemmill, Paul F., *Present Day Labor Relation*, pp. 141-199.

man says, "Out of the consistent practice of it might easily emerge a new basis for cooperation."

Limitation of power of the superintendent to discharge. The plan put into effect the limitation by the company of the power of the superintendent to discharge. Also, through the representation program which opened the channels of communication between employees and higher officials, light has been thrown on the practices and policies of superintendents and this official is forced to realize the depth of his responsibility for maintaining harmonious relations between himself and his men. This does away with a good many malpractices which were the basis for real grievances in the past.

The value derived from the plan. In analyzing the joint committees, we find four committees appointed under the constitution: (1) safety and accidents; (2) sanitation, health and housing; (3) recreation and education; (4) industrial cooperation and conciliation. The membership of each committee is composed of three men appointed by the president of the company and three selected by the employees' representatives. The activities of the first three antedate the Industrial Representation Plan but since then progress in the welfare work has been greater and more rapid. Dr. Ben Selekman, in his 1924 report for the Department of Industrial Studies of the Russell Sage Foundation, described the excellent housing conditions and the attractive communities. He analyzes the procedure of the various joint committees to show just how far employees display initiative, and concludes that abuses through compulsory buying in company stores are things of the past; that inevitable complaints against prices are dealt with promptly and frankly through the Industrial Representation Plan; that the old influence of the company in county and state politics so much discussed in 1913 is no longer exercised; that life in the camps is happier and more healthful and opportunities for schooling are greatly improved. But his examination of the procedure of the joint committees has shown that these changes

are due primarily to the initiative of management and that employees are not given responsibility for decisions.

Working with the first three of these committees as experts in their various field are officials of the company: the chief mine inspector who is responsible for safety in the camps and mines; the supervisor of housing and sanitation in the camps; the medical director who supervises the camp doctors, directs the Minnequa Hospital at Pueblo, and has general responsibility for the health of the miners and steel workers; and the supervisor of education and recreation, who has an advisory relation to the schools and to recreational activities.

Adjustment of grievances. The committee on industrial cooperation and conciliation handles the adjustment of grievances, which was one of the primary purposes of the plan. The decision of a majority of this joint committee is considered binding. To enable it to reach a decision the committee may select an umpire to sit in conference with it, and his decision shall be binding. If the committee fails, an arbitrator or a board of arbitration may be appointed. Finally, the Industrial Commission of the state may be asked to arbitrate a difference. It may be noted here that a grievance need not always reach the committee. An employee having a grievance may make complaint on his own behalf or through his elected representative to the mine foreman or to the superintendent. If he is not satisfied, he may make appeal to the president's industrial representative. He then has the further right to appeal to the division superintendent, assistant manager, the manager of the fuel department, general manager, and president, "preferably in consecutive order."¹⁶ Then, if these fail, the difference may be referred, upon request, to the president by the employees' representative; or upon the initiative of the president himself, to the joint committee on industrial cooperation and conciliation of the district in which the employee works. Mr. Selekman's

¹⁶ Constitution of the Industrial Representation Plan of the Colorado Fuel and Iron Company, Appendix B.

report reveals that the employees did not make use of the plan for the presentation of grievances, and regarding this he also concludes that, although the first function of an employees' representative is to be a connecting link between management and employees for the adjustment of grievances, in actual practice the employees' representative does not deal with all grievances and he does not have a definite share in decisions. This lack of responsibility on the part of the representative is a fundamental defect in the plan as it is conceived and practiced.

Unwritten law in the mining industry. Regarding the memorandum of agreements two important problems must be mentioned in this analysis. First, the judicial procedure is so informal it cannot be conducive to the building of firm foundations of agreement between employers and employees. This is because of the fact that in addition to the written plan and state laws, the usual practices in mining, the orders and decisions of company officials are to be regarded as part of an agreement between company and employees. Also in addition to these unwritten laws there is the growing body of accepted practice, so the procedure is really an executive one of reaching decisions rather than a judicial one. Secondly, basic wage rates are not within the scope of negotiations through the plan. The plan guarantees to pay its employees competitors' rates, but competitors' rates are accepted by the company as its own and nowhere is "competitor" defined. By not sharing in the determination of the rates accepted by it, the company is in a position of leaving to others the vital question of the wages of its own employees, and also by this policy the company places its own employees in the position of having to share through the representation plan in the matter of wage agreement. In the working of the plan, then, wages followed those of union fields except once, when they were lower. It is not to be doubted that the workers joined the union in 1933 because they saw in it their one guarantee for a security independent of the policy of any one company.

We must conclude, from the analysis of this plan, that its only claims to success lie in its local beneficial results in conditions and community life in the absence of compulsory buying at stores, in better schooling, in the end of interference by the company in county and state politics, in better relationships between managerial officials and miners, and in the right of conference. The response of the miners to the national issue in 1918 and 1922 and the local one of wages in 1921 shows that employees' representation has not prevented strikes. Also, it embodies none of the principles of collective bargaining. Even if these two vital problems were handled in another way, the plan itself has problems of administration and function in policy that make it unwieldy and undesirable as a solution in industrial relations; as pointed out above:

1. The workers' representatives, being entirely dependent upon the benevolence and good will of the company, are afraid to appeal grievances.
2. The plan does not develop initiative or leadership. The above benefits are due primarily to the initiative of the management.
3. Because the workers had no voice in the actual framing of the plan, they were therefore indifferent to it¹⁷ and did not make use of the plan for presentation of grievances.¹⁸
4. The men are not given enough responsibility under the plan to retain their interest.

The Colorado Plan and trade unions. When we compare the plan to trade unionism, we find that one fundamental issue between trade unionism and employees' representation is the method of presenting and adjusting grievances. Under the discussed plan the grievances must be adjusted either by company officials or by a joint committee in which the employee is represented solely by fellow employees over whom, in the last analysis, the representatives of management have power of discharge. If a decision on this grievance requires some sacrifice

¹⁷ Yellen, Samuel, *op. cit.*, p. 249.

¹⁸ *Ibid.*, pp. 148-165.

by the stockholders or management, can the employees without a representative independent of the company and without a treasury wherewith to pay his salary or other expenses, claim the same attention from managements and boards of directors that they can secure through a union? And can employees' representation protect the whole group of miners in their effort to secure and maintain an adequate wage scale? The answer is that under this plan these things are impossible. However, it must also be noted that the trade union movement has worked for mass action over an entire industry with the strike as its chief weapon, and has said little about cooperation in efficient production. Nor has the union movement been much concerned with the relations between a company and its employees in their common task of producing goods cheaply and efficiently for the benefit of the public.

The plan of the Dutchess Bleachery, Inc. But when we compare the Industrial Representation Plan with contemporary programs such as the Partnership Plan of the Dutchess Bleachery, Inc., we find some interesting points of contrast. The Partnership Plan of the Dutchess Bleachery, Inc., of Wappingers Falls, N. Y., was established in 1918 to meet problems arising from the management of its six hundred workers. Contrary to the Industrial Representation Plan of Colorado which did not extend to the workers a share in any phase of management nor define in any way partnership terms, this Partnership Plan embodied three concrete principles of partnership: the workers were to have a knowledge of all the facts involved in the business; they were to have representation on all important boards which formulated policy and decided on action; and after they had received market wages and the stockholders had received a dividend of 6 per cent and two sinking funds were set aside, they were to share profits equally with the stockholders. Too, representation is very much more satisfactory than the Colorado Industrial Representation Plan. Not only does the Partnership Plan afford representation to employees in determining the condition of their employment; it admits to the Board of

Directors a representative of the wage earners in the mill; turns over entirely to the Board of Operatives the administration of the company's houses; assigns definite responsibility for shop management to a Board of Managers composed of officers of the company and six wage-earners; provides employees with information concerning the financial condition and conduct of the business; and includes a representative for the townspeople of Wappingers Falls in the Board of Directors. Ben Selekmán¹⁹ reports that in 1924 the plan had real success from the point of view of the workers as well as that of the stockholders. Not only do the operatives feel that they have a stake in the success of the business, but the active owners realize that a policy of cooperative management such as obtained in the Bleachery does not necessarily mean a decrease in dividends; in fact, it has been proven to the contrary. In comparing the two plans, one functioning in a mining company dealing with over 12,000 employees and the other in the Bleachery, we must bear in mind the many natural differences, working conditions, number of workers, etc. It is to be questioned whether or not the Partnership Plan would be as successful in the mining industry as it has in the bleaching industry, but this comparison does reveal in the Industrial Representation Plan the lack of offering the workers something concrete, something definite that could be translated and made vital to them in their everyday experience. After a three-year examination of this Partnership Plan, Mr. Selekmán concludes:

It is one of the most sincere and most comprehensive schemes of industrial relations introduced into industry on the initiative of the employers. Moreover, it brings to light the absentee-landlord in a new role, that of promoting a democratic relationship among the various branches of an enterprise.

The Dutchess Plan applied to Proctor and Gamble. The Proctor and Gamble Committee Conference Plan is in set-up comparable

¹⁹ Selekmán, Ben M., *Sharing Management with the Workers* (1924), pp. 160-164.

to the Dutchess Bleachery Plan, but is not at all successful because the plan was not instigated by the workers and they have never had any interest in it. It functions, but any changes are administered by the management without any real assistance from the workers. The activities in the Dutchess Bleachery show that employee representation may bring to the workers a sense of real participation in management, with very definite gains in good will and cooperation as well as in material things. On the other hand, this Committee Conference Plan demonstrates how unimportant employee representation may become, for the employees are not reaching forward through the plan and the management does not achieve anything by it.

The Industrial Representation Plan applied to Standard Oil. The Standard Oil Company of New Jersey has adopted the Industrial Representation Plan of Colorado, with certain modifications. However, there is no arbitration provision and the right of appeal goes no further than the president. The Philadelphia Rapid Transit Company Plan, or Mitten Plan, is based on a "cooperative welfare association" in connection with a profit-sharing and stock-ownership system. It is comparable to the Industrial Plan only in its representation program. Daugherty²⁰ reports that it is regarded as one of the fairest and most successful in the country.

The Representation Plan applied to Filene and Goodyear Tire and Rubber. The Filene and Goodyear Tire and Rubber Plans are two more examples of employee representation. The former has a very successful representation program but, like the Colorado Iron and Fuel Company, it has kept the ownership and final control of the business in the employers' hands. The latter is one of the largest firms having a governmental form of representation. The voting workers known as "industrials" elect sixty representatives to an industrial assembly, which body includes a house of representatives of forty workers elected

²⁰ Daugherty, Carroll R., *Labor Problems in American Industry* (1933), pp. 772-798.

from those who have been with the company one year or more, and a senate made up of twenty members chosen from employees of five or more years' service. The management is well represented, though, and like the Industrial Plan maintains the right of final decision.

Plan has value in social welfare—not as instrument to eliminate strikes. So we conclude that aside from the plans of the Dutchess Bleachery and the Philadelphia Rapid Transit Company these programs may be conducive to better relationships between workers and officials and finer social welfare opportunities; but they are not instruments by which strikes may be eliminated nor by which collective bargaining rights may be obtained. We may benefit by these experiences and draw several generalizations from them in order to facilitate the work of others wishing to grant workers participation in functions of managements with a view to democratic relationships and a more healthy industrial situation. In the first place, the policy must be endorsed by the owners or by those who have real power in decision. Secondly, someone who knows the minds of those having the real power must be placed in charge of the administration of the plan embodying the labor policy of the company, so that he may have the necessary confidence to push the interests of the workers against what may even be opposition on the part of the executive in charge of the factory. Needless to say, the administrator of the plan must be one who can stimulate and develop leadership among the workers as well as cooperate with such leadership as is already available. It is clear that he must also know how to cooperate with the local managers, superintendents and foremen.

In the third place, the plan should not be a rigid one. It should be simple at its beginning and should permit of expansion with the growth of initiative and ability in the workers. In the fourth place, it should not be presented to the workers as a substitute for any other plan or organization requested by them in cooperation with national unions, and its purpose should not be to nullify or compete with union organization.

Worker should have power to improve his status. In order to awaken the interest of workers any plan for industrial relations must give them real power and an opportunity to improve their status. The response of the workers will be in proportion to this power, to the extent to which they share in the conduct of the industry, and to the amount of improvement in their own economic status.

Finally, we might deduce from the study of these various plans that the human element cannot be left in the last analysis to the individuals concerned, but rather should be controlled in good times and bad by a rule of laws—a law that is drafted and applied by fact-finding bodies who have accumulated knowledge from a detached and non-emotional past.

CHAPTER X

THE ROLE PLAYED BY THE GOVERNMENT IN INDUSTRIAL DISPUTES

The evolution of industrial relationships. Change and evolution are obvious in the very terms that have been used in defining industrial relationships in different eras and areas. The long struggle of contending groups and interests has resulted in great changes in the economic and social as well as in the legal position of the employer-employee and public relationships. The most important step in this struggle, insofar as this study is concerned, was achieved when groups of workers were able to bargain collectively with individual employers. The next step was the making of a collective agreement between representatives of all, or a considerable part, of the workers in a given industry and the associated employers in the industry—in which case collective bargaining in its narrower sense is being replaced by negotiations entered into by official representatives of associations of workers and employers. This stage has been reached only in certain industries. The final step is in the process of being made; it is the effort undertaken by the government to compel industry and labor to cease these periodic states of anarchy when law enforcement is hazardous, when the economic status of both the employer and the employee is interfered with, and when the social condition of the whole community is disrupted.

The chief purpose of this study is to account for the evolution of this latest form of collective bargaining in the coal, steel, railway, and automobile industry; as well as to describe the administrative machinery that has been developed for the making and enforcing of agreements; and in general to analyze the laws and working rules which have come to govern the relations of industry, labor, and the government.

Results to the worker from legislative enactments. Out of the struggles resulting in collective bargaining and legislative enactment have come higher wages, improved working conditions, and at least a degree of security. This has resulted in a definitely new industrial status for the laborer as is reflected in the Social Security Act of 1935, the National Labor Relations Act of 1935, etc. In the agreements that have been thus reached, a body of industrial principles is being worked out much as legal principles are developing in other fields.

Though in the past the procedure for adjusting industrial conflicts has been outside the domain of formal law, and much of it still is, nevertheless we now have law and procedure and its sanctions are those of power. Stripped to truths, a controlling force has been the power of each of the respective parties to inflict damage on the other in case concessions were refused. The coal or steel operator "accepted" or the miner or blast furnace operator "accepted" this principle or that demand, in a given case, because acceptance promised to be less costly than any alternative available at the time. The question of economic or social justice rarely played a leading part in the acceptances; the first consideration usually was economic necessity. When these concessions were won through the power of advantage to adjust the shifts, strikes, lockouts and labor strife would ensue and the situation would start over again.

The system of negotiating labor contracts. The system of negotiating labor contracts through official representatives of workers and employers has only in 1936 become a legal fact under the National Labor Relations Act. An important part of industry not only does not have collective bargaining between individual operators and their employees, but does not participate in the joint conferences. As a result we have strikes, sit-down, walk-out, lockouts, etc., whose relationship to the entire field of industry is still an open controversy. Due to the competitive advantage which the non-union operators have by virtue of individual wage negotiation, they resist the extension of the

system to their field.¹ On the other hand industrialists who operate union shops, since the competitive disadvantage under which they operate puts them at a marketing disadvantage, wish to have the union system extend to the entire industry; while others, like the Ford Motor Co., feel that the only solution of the problem is to have the system eliminated and go "the Ford way." This general situation as regards industrial relations and the competitive struggle between the union and non-union fields has given rise to the last step in industry-labor regulatory technique: control by state legislation (discussed fully in Chapter IV). The ability of organized workmen in the basic industries to tie up the whole economic system gave the government cause to intervene, and at the same time, created a difficult problem for which to work out a legislative program.

Organized labor in steel. In America, no two industries have accelerated and influenced this development as have steel and coal. We saw in the chapter on steel that the company began slowly but deliberately to remove the union's organization from its units. Its tremendous resources permitted it to do the job with precision and exactness, so exact in fact that the union soon became a skeleton; and such it was to remain until the influence of the national government and the C. I. O. forced the company to sign a labor agreement in 1937.

The steel industry was selected for this study for the three reasons that it is a basic industry, it is a key industry, and it was a company union industry. Steel is a key industry because it is dominated by a single corporation and controlled by the leading financial interests in the country. This is why for more than a generation the wage rate set by the United States Steel Corporation for its unskilled labor was the most important single rate in American industry.²

¹ *Hitchman Coal Co. v. Mitchell*, 245 U. S. 229 (1917).

² In September, 1931, the U. S. Steel decided to cut wages 10 per cent; by October 1, seven million other workers had been affected by a similar cut.

Steel has also been a key industry from an economic point of view. It is the basic material for the production of capital goods, which in turn determines not only the wages but the purchasing power of those wages for the worker. Moreover, the production of steel reflects the demand for capital goods and is thereby a barometer of industrial production generally. Also steel is a basic war industry; both the price of its commodities and its stock reach their highest level during a war or while nations are preparing for war. Nations which wish to be self-sufficient from a military point of view must assure themselves a steady supply of steel.

The heavy iron and steel industry and their subsidiaries employ a half-million workers.³ Actually millions of men, women, and children are depending directly on steel for their support. What of these workers? How has this industry dealt with them in the past? What do they anticipate for the industry under the new National Labor Relations Act?

Almost from its inception steel has been one of the "labor killing" industries. For that reason many studies of its labor policies have been made. The Russell-Sage Foundation made a Pittsburgh survey just before the war; the United States Commissioner of Labor made a study about the same time. After the war appeared the Report of the Commission of Inquiry of the Interchurch World Movement—"Labor and Steel" by Horace B. Davis; and "Economics of the Iron and Steel Industry" by Daugherty, de Chazeau and Stratton. All of these studies tell about the same story—low wages, long hours, unemployment, company unions, destitution, and industrial and social strife. During 1932, United States Steel cut wages 15 per cent and this cut soon spread throughout all the industry.⁴

3 The federal census of 1930 lists 620,894 employees in the heavy iron and steel industry.

4 *31st Annual Report*, U. S. Steel Corp., Dec., 1932, pp. 109. See also Chap. II of this study; also see "Organize the Unorganized," *Labor Herald Library*, No. 17, p. 21; "Company Unionism and Trade Unionism," *Workers Monthly*, January, 1926.

Standard of living in steel. The standard of living which the steel worker is able to maintain for his family is lower than one would expect from the amount of money that he earns. "Middle-class visitors to the United States have frequently been horrified at the poverty in steel towns."⁵ The explanation of the low standard is partly in the wage rate but more particularly in the ebb and flow of employment which first tempts the worker to a scale beyond his ability to maintain and then sweeps away his savings, finally throwing him into the grasp of his creditors; property that the worker has partly paid for on the installment plan is then taken out of his possession. When faced with part-time work and unemployment, the fight appears vain and his standard of living slips to the poverty line.

Housing conditions illustrate the situation caused by fluctuating jobs. In Rankin, Pennsylvania, in 1920, one block of 28 small houses held 256 persons, of whom 116 were children. The four rooms of one house held 34 persons; a man, wife, 2 children and 12 boarders occupied four rooms nearby.⁶

Twelve years later, the families in Rankin and in steel towns throughout the country were equally crowded, but for an opposite reason. They had become unable to pay rent for separate houses and relatives went to live with relatives, even strangers with strangers, as forced evictions were made by landlords and the steel mills remained closed or worked one or two days a week.⁷ Because of poverty due to unemployment people are relapsing to a standard of living that threatens to have serious consequences in its effect upon the health and morals of the population. Ten families live in a house of thirteen rooms, not from any shortage of houses but because the steel industry is not supporting its workers.⁸

⁵ Davis, H. C., *Labor and Steel* (1933), p. 71.

⁶ *An Interchurch Survey*, Rankin, Pa. (1920), p. 32.

⁷ Davis, *op. cit.*, p. 71.

⁸ Ihler, John, "Overcrowding in Pittsburgh" (Director of the Pittsburgh Housing Association), *Housing*, 1932, Vol. 21, No. 3, pp. 212-213.

U. S. Steel signs with C. I. O. Under economic pressure as a result of the depression, plus the encouragement given labor in other industries, U. S. Steel in 1937 signed a working agreement with the C. I. O.⁹ Steel, like some other industries, may have come to know that the outstanding factor against industrial peace is the average employees' distrust of management. Steel has had ample opportunity to recognize that before now. However this distrust came about, however blameless an employer may be with respect to its origin, he must reckon with it and break it down only by fair dealing with employee-selected representatives. The growth of shop committees ought to be proof that management is coming to believe that distrust cannot be broken down by any employment policy, however worthy, that comes from above by fiat. Some smaller industries learned long ago that conference and agreement with the workers or their selected representatives are among the essentials to understanding and confidence. We saw in the chapter on steel and coal that the first constructive act for the worker is that of organization; it has long been recognized both legally and socially that it is only through organization that the individual worker can possibly express himself with any force regarding the conditions of his labor. Too, it gives him a conscious voice in the organization and gives him a responsibility for industry that he never had before. In other words, he should know that he is a part of a force that can accomplish much. It should be clear to labor organizers and union leaders that the union has certain potentialities in the way of personal advantages which will not be overlooked by the politician or financial grafter. All union members, and particularly the leaders, have a serious duty to perform in keeping the "grafter" out; but having the attributes of the average citizen, sometimes they fail. The first and last constructive duty of a labor organization is to protect its members from exploiters and to promote their interest. We have seen that sometimes this interest is short-sighted and becomes an incessant demand for more and

⁹ See Chapter VIII, *supra*, pp. 241-2.

more. The outstanding leaders of organized labor realize however, that if they are to promote effectively the interest of their members, they must at the same time promote and protect the success of their industry and the interest of the public as well.

It is this "public" factor that has now become the dominant consideration. The "public" of course knows no class distinction, nor economic dividing lines; it is made up of all the people. It consists of all three parts of a labor conflict: labor, capital and the general public. But the "public" element, while it includes employer and employee, yet is different. It is not a "disinterested party," but it can only express itself through legislation or public opinion.

Part played by public opinion. It is not the intention of this study to go into a discussion of "public opinion." It is, to be sure, an elusive word. In every community there are several public opinions; some are made to order, some measured by experts, some is imagined by the press or radio announcer. We can say, however, that there have been and still are situations in which inexperienced or over-zealous union leaders failed to reckon with the value of public opinion. During and after the auto strike in 1937 there were instances in particular which antagonized many citizens: the demonstration where armed men blocked an important highway, the shutting off of the consumers' power, and the mass demonstration at Lansing, Michigan. In the steel strike of July 1937, the blowing up of water-mains, endangering the health of the community, is yet another example. We must, however, be aware that there is danger to the lives of innocent non-participants in many kinds of strikes. The 1937 truck strike in Buffalo and Philadelphia, in halting transportation, exposed to some danger those members of the community who had but a slim margin of surplus goods. Milk strikes mean that consumers in New York City must do without. But when there is refusal to transport perishable goods to the extent that the public suffers either through scarcity or high prices, the balance of power is usually held by

public opinion. There seems to be no doubt that the public should and will demand government intervention by emergency conciliation to settle such disputes as hospital strikes, or any strike that threatens the life or safety of helpless non-participants.

Definite contributions to industrial relationships. It is in situations like these, when capital or labor oversteps its bounds or fails to evaluate public opinion, that the public steps in.¹⁰ The definite contributions that have been made toward a better industrial relationship have often been made by the public through either of two channels, legislation or public opinion. Legislation is often public opinion "crystallized," yet it is a step further than public opinion, for public opinion may cool, whereas through legislation it is possible to establish a point below which there is to be no controversy between labor and industry. The Fair Labor Standards Act is a good example of this type of legislation. When the government passes laws compelling arbitration, or establishes machinery for settling disputes such as we have for railroads, it is removing the subject treated from the realm of controversy, at least up to the point prescribed by law.

Public intervention. This intervention by the public, as we have pointed out in other chapters, has been desirable so far. It has outlawed the sweatshop and protected the worker from many of the various forms of exploitation. Also it protects the fair employer from his conscienceless, exploiting competitor. Although it does not eliminate all controversies, it does estab-

¹⁰ James Bryce in his *American Commonwealth* states: "Towering over Presidents and State Governors, over Congress and State Legislatures, over conventions and the vast machinery of party, public opinion stands out, in the U. S., as the great source of power, the master of servants who tremble before it." Chap. LXXVIII, p. 255. Or, as Senator Wagner states it, "Careful inquiry into all aspects of the problem, widespread public discussion, and the canvassing of all shades of public opinion, must precede specific legislation if the results are to be effective, enduring and cognizant with our best traditions." *The American Labor Legislation Review*, Vol. XXVIII, No. 2, June, 1938, p. 35.

lish a procedure; it fixes a minimum depth below which a controversy cannot sink.

Through the legislature also, the public may step directly into the industrial struggle. It may establish public investigation to gather and publish information concerning wages, health, living conditions, cost of commodities or any other matter that may become subject to controversy.¹¹ It may provide for mediation between employer and employee. It may establish agencies for conciliation, or even make arbitration more attractive.

The most striking example of the force of public opinion in the steel industry was its decision to abolish the twelve-hour day. As we pointed out in the chapter on steel, the strikes in 1919 and the survey of the Interchurch World Movement on that controversy served to focus public attention on the abuse of labor with the twelve-hour day. Under the influence of this public interest, President Harding asked the steel operators to abandon the practice; but they reported back to the President that any change in hours would be impracticable. Then came the storm of protest and condemnation—ministers, religious bodies, newspapers, periodicals and any one who felt like expressing himself condemned the “steel trust,” with the result that within ten weeks after the decision to make no change in the working day, came word that steel had decided to abandon the twelve-hour day.

Acts of Congress protecting the worker. Historically, industrial disputes represent a reaction of labor to economic insecurity. The laborers are usually asking for a share in the control and determination of working conditions. Many industries have recognized these difficulties, and have established a law common to their industry with its own “constitutional” guarantees. The American public for the most part has, through legislation, recognized this development. The public by impli-

¹¹ For example, see Senate Resolution 265 (1938), providing for a Senate investigation of medical care; \$50,000 was appropriated for the needs of the committee, which was required to report before Feb. 1, 1939.

cation has said that the individual worker is not able to protect himself against industrial competition, and the wages, hours, and conditions of labor can best be determined by workers acting collectively. Through such legislation as the Railway Labor Act, the Norris-LaGuardia Anti-injunction Act, and the National Labor Relations Act, the public has indicated a willingness to believe that industrial peace and social order can best be maintained by encouraging workers to organize and creating machinery through which labor and capital may adjust their differences on an equitable basis.

There is, however, a group of workers who have been legislated against. They have no collective bargaining right, and by statute and regulation they are entitled to none. In one sense of the word they do occupy a different status from the average workers, and it may be that they should be covered by a special governmental board. Here would really be an opportunity for the government to deal with labor through its representatives, by means of boards of mediation, conciliation, and arbitration. This group constitutes the employees of the United States government.

Government relation to business. As government continues to take over the direction of productive facilities formerly held in private hands, it will be forced more and more to recognize the essentially proprietary function of business and all that such control implies. One of the most obvious implications of such control is in the labor problem. Differing from the labor problem in private industry, for which techniques have been developed over a long period, this labor problem is peculiar in that it involves not a conflict between an individual and his employees, but a struggle between a specific group of citizens opposed on the other hand by all of the people acting through the instrumentalities of government. In the past, the general public has theoretically stood in the position of a neutral in labor disputes, except in those cases involving a vital service, but today it is being made a direct party of such disputes. What will be the reaction of the people as represented by their political

officials? Will the strike against the State be deemed legal? Is it legal today? What is the status of the striking government employee? These questions and many like them will press for public and governmental solution if the functions of government continue to expand.

Government workers and the right to strike. In spite of the growth of governmental functions in recent years, there is little discussion of the legal and statutory rights of government workers. This is especially surprising when we realize the unprecedented expansion in the number of public employees who numbered over 3,278,500 in 1932, and whose salaries and wages annually amounted to \$4,520,954,000, which was 11.5 per cent of the national income.¹² In every industrial nation of the world this expansion has taken place, in some nations to such an extent that special organizations of representation have been created in the government structure to give voice to government workers. In Russia, where virtually all of the instruments of industrial productivity are under the direction of the state, a system of functional representation based on the factory soviet, which is generally under control of the labor union, has been devised. In Germany and to a degree in Italy where a substantial portion of industry still remains in private hands, the trade unions as such have been abolished, but government workers are supposedly given a kind of representation under the National Economic Council in the former nation and through the syndicates in the latter.¹³ In democratic America, although as yet no radical change in the organizational structure of our government to give representation to government labor is contemplated, it is increasingly apparent that new instruments of control must be created either informally or by legislation to meet the needs of collective bargaining between governmental officials and their employees. Because this phase of labor legisla-

12 Commission of Inquiry on Public Service Personnel (1935), pp. 87-93, 140-142.

13 Whitman, Shepard, *Visual Outline of Comparative Government* (1935), pp. 72-86.

tion has been greatly neglected by legislators and the public, the need of immediate research and study in the field is apparent. For this reason, it becomes necessary to discuss the political and legal aspects of the question, which must form the basis of any constructive developments in the field.

Public opinion and government employees. Unfortunately, there is no substantial body of material on the question of employee organization in government—chiefly because the comparative inactivity of government workers has never served to bring the question sharply to the attention of the public. However, a few historic “ incidents ” have occurred and around them public and press comments, together with a few legal decisions, have furnished a basis upon which the approximate direction of opinion on the subject may be traced. Because public opinion in the past has generally condemned the use of industrial tactics against government, we have organized a part of this study around the various arguments used against employees’ organization and the use of the strike. In this exposition, no attempt has been made to differentiate between arguments justifying the strike as such while permitting employee organization, as it is the writer’s opinion that most antagonists of employee organization have in the main been concerned over the possible threat of strike or sabotage contained in the existence of organizations of workers in government. In short, most of the opposition to organization is not directed against it, *per se*, but rather against what organized employees are capable of doing. After stating the arguments against organization, we have attempted to evaluate them, listing the more familiar points in rebuttal in an attempt to gain as objective a picture of the question as possible.

The political aspect of government employees. The relationship between the civil servant and the state as an employer on the one hand, and the employee and the capitalist on the other hand, is vastly different. Because the state is sovereign, it is generally held that an attempt to interfere with the processes

of its instrument, government, is a derogation of its sovereignty which cannot be permitted.¹⁴ This concept is expressed by the general public in the feeling that those who earn their living in the service of the state have a special obligation of loyalty and obedience quite distinct from that of the ordinary wage earner. Its expression is in some ways an extension of the arguments used by private employers against striking employees by charging them with disloyalty, a charge which takes on an added meaning when applied by public authorities to public servants who collectively present their grievances by the usual industrial methods. In recent years, with the growth of democratic governments and with the abandonment of doctrines justifying the complete and all-inclusive powers of the historical mercantilist state, it has been the tendency to justify the state's claim to special rights and considerations on practical grounds. Hence the state has been pictured as not having an inherent claim to special consideration, but needing special powers because the functions it performs are particularly vital to the life of the community.

The doctrine of complete state authority. The doctrine of the necessity of a complete and unlimited exercise of the state's authority in the conduct of matters vital to the public welfare has formed the basis of opposition to police strikes such as the Boston strike of 1919. The tendency has been to picture all branches of the public service as being equally vital to the community, so that in practice equal objections have been made to a strike of street-sweepers as to a strike of policemen. However, as Sterling Spero has shown, government is concerned with many other functions besides those of a sovereign nature. He lists the administrative, the public services, and the industrial functions of the state as being far less vital to the public welfare than the conduct of many services left in private hands, but no less vital to society. A strike of milk drivers would have more serious repercussions than one involving park attendants, so it

¹⁴ Spero, S. D., *The Labor Movement in a Government Industry* (1924), p. 10.

would seem that its sovereign powers excluded, the government carries on many functions which do not serve the community to any greater extent than do private organizations carrying on similar functions. While there is logic in granting full industrial rights to one group in the community and denying it to another on the basis of their relative necessity to the community's well-being, there can be no justice in denying these rights to all government employees on the basis of fictitious necessity. Even if it is held that governmental functions are so important that nothing can be permitted to interfere with their operation, it can be shown that the failure of private enterprise can often cripple vital governmental functions. Utilities operated by the public are often dependent upon private mines for their coal, while a strike in the steel industry which produces steel plate for the War Department could easily halt the construction of battleships, which might be a very necessary function.

It has often been urged that the organization of public employees destroys the position of the state as a neutral in social and class conflicts.¹⁵ As civil servants are the agents through whom the government functions, and as the government is the servant of all citizens without regard to group or class, it follows that civil employees must remain unaffiliated with any group or class so that they may be above suspicion or prejudice in the performance of their duties. This argument has been advanced against the organization of police and firemen whose duties frequently place them in a position where, if their sympathies were with one side, the outcome might be materially affected. The traditional position of the state as the objective and impartial arbitrator and dispenser of justice is expressed by the tradition of the common law and by the usual practice of appointing a third or neutral member representing the state on odd-numbered boards called to adjust labor disputes. However, the complete acceptance of the idea that government acts only in behalf of the general welfare indicates a confusion

15 "U. S. Employees May Not Aid in Campaign," *Washington Herald*, July 28, 1932, p. 4.

of ideals with reality. There are those who claim that generally the government is utilized as the instrument of the dominant class in society, and that attempts to maintain "law and order" result in maintaining the *status quo* and the existing order, no matter how unjust to a large proportion of the people.¹⁶ It is further urged that organization among public employees will tend to create a "labor consciousness," a recognition of the essential unity of all wage and salary earners which will tend to counteract the "bias of property" so often expressed by the actions of governmental officials in the past.¹⁷

A. F. of L. and government employee policy. Closely connected with and in many ways a logical corollary of the doctrines of state impartiality is the argument that public employees owe their sole allegiance to the state, their employer. To affiliate with groups in opposition to governmental policy is evidence of disloyalty. The opposition of the A. F. of L. to the government's policy with regard to the steel and coal strikes of 1919, and the affiliation of certain sections of the government workers with the labor movement at that time, was held to be an invitation to sabotage and covert, if not overt, opposition to the enforcement of governmental policies. In answer to this argument it is generally stated that if this theory is carried to its logical conclusion, it would preclude the affiliation of civil employees with patriotic bodies, religious groups, etc., which might oppose any one of the many policies of a modern government. The whole problem of government employees affiliating with outside labor organizations revolves about a point of questionable procedure. The situation might develop where such an organization could stop or impede the progress of governmental function to such an extent that the public welfare would be placed in danger, though there probably could be worked out a procedure whereby employees in a certain branch of government work could participate in outside union activities.

16 Barnes, Harry E., *The History of Western Civilization*, Vol. II (1935), p. 215.

17 "Coöperation in Chicago," *Social Work Today* (Feb., 1935), p. 22.

The state and industry. It is generally recognized that for the conduct of national welfare the state must have absolute and final authority in many fields of human endeavor. In the conduct of war, in the preservation of public order, the state's authority rests upon its prestige, ultimately reinforced with its punitive powers. It is sometimes held that the free exercise of industrial rights in government would tend to limit this authority, and if the exercise of these rights were successful, it would diminish the state's prestige. There is no doubt much validity in the above charges, particularly if government labor organizations are determined to make unfair demands and back them up with considerable strength. It is also conceded that the state's prestige is of great importance as an adjunct to formal law-enforcing powers. While a successful strike against a powerful agency such as the federal government would do little to diminish its prestige, a successful strike against a city or state government might have far-reaching consequences in subsequent attempts at law-enforcement. Placing great value on their sovereignty, governments have often gone to great lengths to preserve it. In most instances, they have refused offers to arbitrate differences and have insisted on the right of final decision. In 1919 the Massachusetts authorities refused to recognize the existence of the police union; when the firemen struck in 1919 in Cincinnati, the mayor dismissed them, leaving the city without fire protection.

The government as employer and as public authority. Much of the difficulty in determining the relation of employee organization to state sovereignty has been in the failure to draw a distinction between government as an instrument of public authority and as an employer of civil servants. Public authority is by right and necessity exercised over all citizens. To government is owed certain duties and allegiances and on the basis of these duties citizens can be drafted into armies, have their property commandeered in defense of public safety, or be punished for law breaking. On the other hand, civil servants are citizens who are hired by government to do specific kinds of work for

which they are paid. The basis of their relationship to government is purely economic. It would seem, therefore, that the exercise of the state's authority over them is limited only to the conduct of their work; its authority over them as citizens, however, is virtually unlimited. In practice the distinction between the government worker as an employee and as a citizen has not been drawn, and in the resulting confusion the employee has been charged with disloyalty, lack of patriotism and even treason. Any attempt to distinguish between the government worker as a citizen and as an employee depends for its success upon the essentially contractual nature of the employee's relation to government. Such recognition does not necessarily mean that there shall be collective bargaining between government and its workers, but it does imply a recognition of employee organizations and the eventual establishment of official or unofficial bodies for the hearing of grievances such at the Whitley Councils of Great Britain.¹⁸

Unions in government employment. To students of governmental organization, the question of the role of unions in government is a problem of considerable importance. It is held by many administrators that employee organizations constitute a hindrance to good administration. They hold, and not without justice, that unions established on the basis of job protection often exert pressure to maintain obviously incompetent employees on the staff. They charge that unions often strenuously oppose the reorganization of government units because of the possible elimination of jobs in which they feel they have a vested interest. Moreover, the usual tactics of government unions in appealing directly to the legislature for beneficial legislation are scarcely conducive to well-balanced executive control. While many of these charges are undoubtedly true, in many cases it is necessary to determine to what extent the charges are based on genuine opposition of the unions to good administration and to what extent they are the result of a

18 Pfiffner, John M., *Public Administration* (1935), p. 248.

natural desire on the part of all administrators to "run their own business in their own way without outside interference." Administration functioning in agencies where there have been no unions has often resulted in overwork, long hours, poor working conditions and lowered morale generally—conditions which are more conducive to inefficiency than possible checks on administrative power. It is to be hoped that as the base of employee organization becomes more established, the unions will attempt to establish and maintain high professional standards, cooperate with the administrator in ironing out problems that might tend to lower morale, and in many ways make themselves indispensable to the well integrated organization as reflecting accurately the employees' point of view, so frequently neglected in the past. Up to now, this higher type of organization has been absent because of the necessity of expending all energy in the fight to maintain the very existence of organizations subject to continual attack. The alternative to legislative intervention in administration resulting from employee pressure lies in official recognition of unions and the setting up of councils for the hearing of complaints, or in the general adoption of the practice of leaving the determination of work conditions, remuneration, etc., in the hands of a permanent personnel bureau.¹⁹

Possibly one of the strongest weapons used against employee organization in its exercise of the strike has been the appeal by officials to patriotism on the basis of loyalty to the state, an argument closely allied to the one in the foregoing paragraph. It is held by such officials that the public employee is analogous to the soldier in his relations to the government and should be subject to the same penalties for disloyalty. There is, on objective analysis, no possible parallel between the soldier and the government worker except that their salary comes from the same source. A special code of law governs the soldier, which is justified in its stringency only on the grounds of military necessity. On the other hand, the civil service, although it

19 Mayers, Lewis, *The Federal Service* (1922), p. 560.

functions in time of war, is essentially an instrument of peace. It is recruited on the economic basis of bargaining in the labor market. Patriotism as such rarely enters into the service of a person working for the state; the relationship is an economic one and must be viewed in the light of economic relationships.

Work of civil servants regulated by legislation. It is often held that the denial of organization works few hardships on civil servants. Unlike the private employee his conditions of work are fixed by legislation and he can utilize his prerogatives as a citizen to influence legislation in his behalf. This argument fails to recognize the true situation of the public employee. It is true that in a sense he is his own employer, but his powers of bettering his condition by individual means are slight. Except in great cities his relative numerical strength is not great, and if he is a federal worker, he cannot vote through unions or representatives of any type. Unlike a worker in private industry, he cannot expect any real relief by approaching the department head with requests, as this officer has little control over salaries, etc., being in turn responsible to the legislature. At best, legislatures are occupied with many considerations other than those pertaining to the working conditions of government employees, so that they tend to pass laws at infrequent intervals and then forget about their responsibilities in this direction. Salary schedules fixed by statute are inflexible and rigid, and while they may originally be set at a high level, with the passage of time they may be rendered inadequate through rising prices. This is well illustrated by Mary Conyngton's study, "The Government Wage Policy for the Last Quarter Century."²⁰ She reports that between 1893 and 1919 the increase in the average salary of federal employees in the District of Columbia was 20.53 per cent exclusive of bonus, while the index of retail prices of food increased from 100 to 259.

²⁰ Conyngton, Mary, "The Government's Wage Policy for the Last Quarter Century," U. S. Bureau of Labor Statistics, *Monthly Labor Review*, June, 1920, pp. 19-35.

The rule of federal service. As a means of preventing abuse of the merit system, civil service laws almost universally preclude practically all political activity on the part of civil servants. The rule in the federal service is stated as follows: "Persons . . . who are in the classified competitive service, while retaining the right to vote as they please and to express privately opinions on political subjects, shall take no part in active political management of campaigns."²¹ So sweeping is this provision that it has been interpreted as forbidding such activity by indirection or through outside organizations. Apparently these limitations on the political rights of workers, admirable as is their reason for existing, necessitate the creation of instruments by which employees can make their demands felt.

As citizens, government employees are subject to the same laws as workers in private establishments; but more than this, because their employer is the giver of the law, their situation is peculiar in that they are subject to laws not applicable to citizens generally. The status of the civil employee in the use of the strike weapon, for example, is very different; but because of the absence of many strikes against government, such precedents as we have are fragmentary and of little help in determining the trend of judicial decisions on the question. Most of the law governing the relationship of employees to government is statutory, the most important law in this connection being the Lloyd-LaFollette Act of 1912.

The Lloyd-LaFollette Act. The Lloyd-LaFollette Act was passed as a result of the acts of postal authorities in penalizing members of the organizations of which they did not approve. It also aimed to invalidate the "gag" rules issued in 1902 and again in 1906 in an effort to force all employees to appeal to their department heads for the redress of grievances, instead of appealing directly to Congress. The Act stated that "the membership in any society, association, or club, not affiliated with any outside organization imposing any obligation or duty

²¹ United States Civil Service Commission, Form No. 1982, Civil Service Rule No. 1.

to strike against the United States shall not constitute cause for reduction in rank or removal from the postal service. . .”²² It will be noted that the law did not grant the right to organize. This right existed before and existed in theory without statutory recognition.²³ The law sought only to limit postal officials in their right to discriminate against union affiliation and reaffirmed the right of petition of postal employees. The law indicated government disapproval but did not deny the right to strike. It permitted affiliation with outside organizations “not imposing an obligation or duty to strike,” a clause which permitted A. F. of L. affiliation as this organization cannot require such action from its constituent unions.

Legislative powers and employee organizations. It is generally granted that the power of legislative bodies is practically unlimited in dealing with employee organization in governmental units over which they have control. We find, then, a number of laws regulating employee organization and the right to strike, while other statutes conferring broad powers could easily be invoked in event of a strike. As far as the writer could determine, there are no federal statutes denying the right to strike, but a law passed in 1919 applying to District of Columbia police and firemen comes close to doing this. Strikes are rendered impossible by the expedient of requiring thirty days' notice in writing before resignation, while organization is prohibited. Applicable against striking employees in the postal service are laws providing penalties for the obstruction of the mails, while charges of conspiracy against the United States might also be enforced. The law relating to conspiracy which provides, “if two or more persons conspire to commit an offense against the United States, each shall be fined not more than \$10,000 or not more than two years in jail or both,” was invoked in the famous Fairmont case. In 1915, twenty-five employees of the

²² 37 Stat. at Large 55 (1912).

²³ Spero, Sterling D., *Problems of the American Public Service* (1935), p. 179.

post office at Fairmont, West Virginia, resigned as a result of the discharge of three of their number because they felt they could no longer work under Mr. Manley, the postmaster, and "retain their self-respect." They were arrested and later indicted by the Federal Grand Jury for conspiracy to obstruct the mails. As the men were not supported by their union, they entered a plea of *nolo contendere*, pleaded guilty, and were permitted to go free with light fines. In this fashion the government was permitted to establish a dangerous precedent with all of its implications. Speaking of the case, President Gompers of the A. F. of L. said that if the court's ruling were allowed to stand, "it would mean that enlistment obtains for civil service employees—that they are subject to rigid discipline for service or go to prison."²⁴ However, no great importance can be attached to this decision because of its isolated nature and the apparent fact that the case was not carried to the higher courts.

Power of the executive branch of the government. The power of the executive branch of the government is of wide scope in dealing with strikes, both in and out of government. Moreover, the government can generally win the support of the courts in blocking industrial action with the use of injunctions. In 1894, President Cleveland sent federal troops to the scene of a strike of the employees of a private railway corporation on the ground that the strike was hindering the movement of the mails. At the same time the Department of Justice secured an injunction from the federal court against Eugene V. Debs as leader of the strike, basing its claim on the power of the United States over interstate commerce.²⁵ The activity of the federal government is given wide scope by its power under the commerce clause. The Supreme Court in upholding the Adamson Act declared in regard to the commerce clause that Congress "undoubtedly possessed" the power "to provide by appropriate legislation for

²⁴ Gompers, Samuel, Editorial in *American Federationist* (Feb., 1916), p. 123.

²⁵ *In re Debs*, 158 U. S. 564 (1895).

compulsory arbitration in interstate commerce.”²⁶ From the record of the exercise of executive and judicial authority in dealing with strikes in private employment, it is possible to draw a parallel which might well posit the question: “What limits will the executive and the courts observe in dealing with future strikes in the governmental service?”

Reserve power and the government. An important reserve power of government in dealing with organizations and strikes is its power to terminate the service of its employees. Almost uniformly the courts have upheld dismissals for union membership as a proper exercise of administrative discretion, in some cases despite state laws legalizing the existence of labor organizations. In Illinois, Ohio, and Washington the supreme courts of the states have upheld the power of boards of education in discharging teachers for union membership. Generally the courts have refused to review the decisions of local authorities unless there was evidence that they were arbitrary or capricious or failed to follow the prescribed legal formalities involved in dismissals. The courts seem to feel that it is the responsibility of the governmental unit to determine whether union membership interferes with the trustworthiness and efficiency of employees. Even in situations where civil service regulations are in force, little legal protection is given against dismissal. In the federal government, sufficient notice is required of the executive, together with the reasons for the dismissal in writing. Publicity may be given to the dismissal and an investigation conducted by the Civil Service Commission, but no agency is charged with the power of reinstatement. Generally the defense of the executive is that the removal is for “the good of the service,” a justification which is generally sufficient to cover other reasons which might have motivated the dismissal. As the threat of dismissal is often a serious matter with government employees whose specialized skills would fit them only for government service, this fact alone has probably proved the main hindrance to the spread of unionization in government.

²⁶ *Wilson v. New*, 243 U. S. 332 (1917).

Uncertain status of civil servant. In reviewing the legal status of the civil servant, it is apparent that his status is still very uncertain. There is evidence that his position is becoming increasingly secure as the public recognizes his right and need of organization, but more than mere public support is necessary. Public sentiment must be crystallized into laws setting up instruments for collective bargaining.

Government has refused to bargain collectively with employees. From what has gone before, it is apparent generally that government in America in the exercise of its sovereignty has refused to bargain collectively with its employees. This is not universally true, however, for the War Department has worked out a crude scheme of arbitration for its arsenal at Watertown, Massachusetts, for all mechanical employees; a mediation board in the plant made up of equal numbers of employees and officers hears all disputes. Those which cannot be settled by this board are referred to a supreme mediation board at Washington, consisting of representatives of the national unions to which the workers belong and officers appointed by the Chief of Ordnance. Final appeal is to the Secretary of War.

The above plan in operation in the War Department is exceptional in that it deals directly with the union. More common are the informal relationships of department heads and union leaders, whereby orders are issued conforming to union agreements without mentioning the organization. However, in times of stress, makeshift arrangements of this nature are likely to collapse as one party to the agreement moves to take advantage of the temporary weaknesses of the other side. The advantages of the formal recognition and the establishment of permanent boards of arbitration are apparent. The unions are recognized, their position is assured, and as an integral part of the departmental structure, they can cooperate to raise work standards, weed out inefficient workers, and aid in devising new work techniques. In presenting their grievances through the regular machinery of collective bargaining, they remove from Congress the pressure of constant lobbying, now necessary to protect

their interests. As most of the ordinary complaints that arise are easily handled within the department or by a central personnel bureau, the broad questions of wage policy, general working conditions, etc., can then be left to the legislature.

Both industry and labor profit by arbitration. The greatest protection for industry and labor, both in government and out, would seem to be arbitration. Through arbitration, claims may be determined impartially and with even justice; it can be obtained alike by great and small industries, by large or small numbers of men. It is inexpensive; it cuts litigation and eliminates long-delayed settlements of business affairs. By its very nature it is flexible and can be pushed to danger zones. Carefully administered arbitration dissipates fear and while its machinery is working, industry may continue to operate with no strikes, no breakage or waste. In both industrial and commercial life, arbitration promotes good conduct in competition.

Arbitration in industry is not new, yet it has been slow in demonstrating its value in American industrial life. There have been conciliation and arbitration agreements, or agreements to arbitrate differences, between employers' associations and the unions in the building industry in New York City for nearly fifty years.

These agreements began with the agreement entered into by the Master Builders Association of New York and the Bricklayers Union. The agreement included the right to settle every character of grievance except that of trade jurisdiction. The communication in part read as follows, "We fervently hope that we will be able to arrive at a conclusion, admitting that all laws governing our trade must be established by joint legislation between the unions and the employees."²⁷

Joint Arbitration Committee. The history of the Joint Arbitration Committee, as shown by its minutes, is evidence that in the past grievances were of the same character as those which trouble industry today. For example, the following grievances

²⁷ U. S. Bureau of Labor Statistics, Bulletin No. 124, June, 1913, p. 26.

frequently appear: "employment of non-union men, discrimination by employers, paying under the scale of wages," and on the part of the employers, "the restriction of apprentices, men leaving employers for higher wages than union votes, and stoppage of work."

The original plan of arbitration adopted July 9, 1903, recognized the closed principle between members of employers' associations and organized labor. A revision of the plan was adopted April 22, 1904, providing for the employment of union men only, directly or indirectly through subcontractors.

Arbitration in the building trades. The General Arbitration Board consisted of two representatives from each employers' organization affiliated with the Building Trades Employers Association, of which there were thirty-one; and two representatives for each union recognized as a party to the plan, of which there were a like number. The executive committee was composed of twelve members, elected from the General Arbitration Board, six of whom were elected by the representatives of the unions and six by the employers, to serve for a period of six months.

The same weakness is demonstrated in these early attempts at arbitration as was later experienced by the federal government, i.e., they had no power to enforce their decisions. The General Arbitration Board in these early plans had no power to levy fines upon either unions or employer for non-compliance with or refusal to obey the decisions of the arbitrators.

A law of the Philippines. Though remote geographically, an interesting law was enacted by the Philippine Legislature in 1913.²⁸ This Act authorized the director of the Bureau of Labor to arbitrate any labor disputes, summoning parties under subpoenas *duces tecum* to appear before him and testify. The director was then to advise, and bring about such an agreement which might upon hearing be shown to be just and fair. An attorney of the Bureau was provided, whose duty it was

²⁸ Leg. Enact. No. 2385 (1913).

to bring suits in behalf of labor in the event of failure of friendly efforts to settle labor disputes. Such service was without cost to the plaintiff, on the showing of his inability to pay; though where judgment was against the employer, an attorney's fee was assessed as a part of the recovery. This is obviously the nearest approach to compulsory arbitration that has been made in any jurisdiction under the United States government, until very recent legislation at Washington.

Arbitration and industrial peace. The history of arbitration is laudable in the sense that it has continuously contributed to the prevalence of commercial and industrial peace. In the course of industrial labor relationships there are many points of strain and conflict where the prompt intercession of a neutral friendly body would ease the tension. There are situations every day that do not necessarily involve violation of law but which, if left unsettled, may accumulate to the point of generating the ill-will that leads to litigation and disputes where real issues are presented.

The Wisconsin Labor Board. The case of the Wisconsin Labor Relations Board brings out the above point. The Board had adopted a studied policy, treading softly and leaving legal power behind. By this policy the Board in 1937 settled thirty-three of its thirty-four completed cases, without resort to formal order.²⁹

The success of the Board in adjusting these cases, all of them involving unfair labor practices, is rivaled by its unusual success in handling strikes. In its short three months of operation the Board mediated and assisted in the settlement of sixty-five strikes, involving fourteen thousand persons. There has been a progressive decrease in the number of strikes and the number of employers involved since the Board started to operate.

²⁹ Wrabetz, Voyta (Chairman of Wisconsin Industrial Commission), *First Report to Governor LaFollette*, August 1, 1937.

It is interesting to note that Wisconsin was the first state to set up an active labor relations board. The law was passed in 1937 and is patterned in a great measure after the National Labor Relations Act. It is broader, however, in several major provisions, especially in those sections outlawing company unions and vesting the Board with arbitration powers, as well as authorizing it to begin action to restrain "unfair labor practices" on its own motion.

New York and arbitration. In July, 1937, New York State put into effect two new laws designed to promote industrial peace by setting up a state Labor Relations Board and a state Board of Mediation. Under the state Labor Relations Board the employees are assured full freedom in bargaining. The state Act is patterned after the National Labor Relations Act, but is not identical with it. One exception is that the state permits its Board to investigate a controversy upon request of an employer as well as of an employee or a group of employees.

The state Mediation Board is of equal importance. It was created under a separate law, and has for its main purpose the attempt to prevent strikes or to end them once they start.

It is by reason of the various competences of these Boards that arbitration offers security to industrial disputants and a means for securing compliance with the idea of justice and fair competition.

It is impossible to deal adequately with labor and its problems, unless the government must take into consideration strike-breaking and its techniques.

Strike breaking and its techniques. Historically, when differences between a manufacturer and his employees reach a point where a strike is declared, the operator has one of three choices: (a) he may capitulate to the strikers; (b) he may determine the breakage of the strike; (c) he may negotiate with them and attempt to compromise. If and when he chooses the last course, he may advertise for new employees who are willing to work on the terms rejected by the strikers. On the other hand he may,

and often does, telegraph to a strike-breaking agency. If representatives of these agencies are not already on the scene, they immediately take the fastest transportation that will get them there and proceed to talk business, just as any other commercial salesman would. When terms are finally reached, the strike-breaking agency begins its work.

The history of strike-breaking. The history of strike-breaking is not an attractive one; it has been, and still is, often bloody and murderous. Its employees are often an army of thugs and mercenaries. They are apt to have no legal responsibility and therefore are unscrupulous in the use of techniques. Too, it is a very profitable business, and profit has been an aid to this particular brand of "justice." It is also interesting to note that this strike-breaking "industry" which thrives on legitimate industrial disputes exists in no other country in the world except the United States. Why does it exist here? Why has the business never been thoroughly exposed in our courts?

The first organized strike-breaking agency in this country was set up by Allan Pinkerton in the seventies. This agency supplied "guards for life and property," not men to take the place of strikers. The first to mobilize armies for shipment over the nation wherever men quit their work for better pay or shorter hours was Jack Whitehead. He operated from about 1885 to 1900. One Jim Farley was his successor. Under Farley's guidance, the profession acquired a halo which the various branches of strike-breakers have since attempted to maintain. Farley was said to have been a brave and generous man; he took only men who were trained mechanics, each an expert in his job. The myth continues with the notion that Farley never broke a strike in which the employees on strike were paid less than two dollars a day. Mr. Farley apparently wished to convince labor that there were depths to which he would not sink.

Detective agencies and strike-breakers. Farley's last strike-breaking job was in San Francisco in 1907, when 12 men were killed and 252 wounded as a result of the strike-breaking seige.

After this battle the Farley men worked under the Bergoff agency. Bergoff took a paragraph from the book of industry and specialized in three principal departments: (a) "under-cover" department; (b) open shop department, to keep the wheels of industry moving; (c) protection department, composed of big disciplined men "for the protection of life and property." Other agencies have specialized also: for example, Burns and Pinkerton men excelled in industrial espionage; Baldwin-Felts men worked more in the special coal mines of West Virginia and Colorado—but when it came to recruiting large numbers of strike-breakers as distinguished from guards, Bergoff's was usually the first agency called.

The cost to industry of strike-breaking. Strike-breaking has been costly to industry. Besides the high prices paid to the agency, the strike-breakers usually steal or destroy everything on which they can lay their hands. They have been known to steal plumbing fixtures, expensive furs, and each other's old clothes. A strike-breaker is usually paid \$2.50 or \$3.00 a day, and what he can steal. During street car strikes, the strike-breakers consider it legitimate to take the fares, and when one railroad company issued "slugs" the strike-breakers went on a strike until they were permitted to collect the money. Bergoff claims that a car barn with five hundred strike-breakers in it is worth from \$500 to \$1000 a day. But the payoff to the agency is where the immediate outlay goes. From 1914 to 1924 Bergoff alone collected \$10,000,000.

This business of strike-breaking is still with us. Standard Oil of New York in 1929 paid Bergoff \$175,000 for two weeks' work. In 1934 Bergoff sent his men to Milwaukee but Mayor Hoan immediately had most of them arrested. In 1935 his men were sent to Georgia, but Governor Talmadge deported them. Though the field for professional strike-breaking is at this time narrowed by company unions, by racketeers, and by private espionage systems such as those maintained by the automobile industry and by the United States Steel Corporation, there is, nevertheless, not a large city in the country where private

detective agencies will not be glad to furnish informers, strike-breakers, and guards. About 50 per cent of the licensed detective agencies in New York solicit strike-breaking work. The following is a fairly representative advertisement of these agencies:

We have unequalled facilities through special service in plants, factories, and business houses to expose and correct existing faults and abuses, such as radicalisms, discontent, dishonesty, and inefficiency.

This is what they call "preventive work."

The development of C. I. O. Many authorities contend at this time that had industry been as solicitous of labor as it has been of strike-breakers, the Committee for Industrial Organization would never have come into being. The C. I. O. is largely a revolt against company unions that have not only been tolerated but have been encouraged by the American Federation of Labor. These company unions many times have been but little short of organized racketeers, working for industry. The rapid success of the C. I. O. in organizing the mass-production industries can be attributed to a conscious recognition on the part of labor of a need for the right to maintain their own labor organization for the purpose of bargaining and settling labor disputes generally. Whether this movement is permanent or temporary only the future can answer. At any rate, the C. I. O. has achieved astonishing results in its short existence and appears now to be digging in to consolidate and extend its gains. It is certainly a force to be reckoned with in the economic and political life of both industry and labor.

Law and strike-breakers. Again, boards of arbitration and mediation with the sanction of law would not only make organized strike-breakers impossible but would make them unnecessary. The machinery and tactics of the two are different. Strike-breakers employed by capital, when a real issue is at stake, never settle the trouble. The laws creating labor relations boards seek to assure to labor the right to free organization,

and to write into public policy the theory that industrial peace can be achieved most lastingly if there is a balance of power between industry and labor. The history of labor disputes has demonstrated that a great preponderance of industrial power on one side or the other has never made for long-time stability, except on the basis of exploitation and coercion. This same history also indicates that collectively established principles are most successful in industries where both labor and capital have been effectively organized. If, therefore, the present drive by federal and state governments to create laws permitting labor to organize results in equalizing the status of workers and their employers, it will unquestionably have established machinery and a technique for industrial peace.

It does seem strange that the field of interstate commerce, over which the federal government has jurisdiction, should have been without systematic labor adjustment machinery to prevent interruption of service until as late as the Wagner Act. This seems all the more incredible when it has as an example in the limited transportation field an effective system of conciliation, mediation, arbitration, investigation and adjudication, developed by Congress over a half century of experience. Losses in wages, employment, destruction, and business mounts to hundreds of millions of dollars; hatred and class feeling are developed: while in the railroad industry a high degree of peace has been maintained since the adoption of the Railway Labor Act of 1926.

The need for national legislation. As we close this study the need for a more definite national labor policy seems to the author an imperative necessity. The history of industrial strife is filled with industrial tragedies that could have been avoided, if the disputants had been provided with a legal program of procedure. Legislation and experience show also that the government has barely opened up this vast problem of national labor relations.

The federal government has lately reentered the field of labor and industrial disputes and will play in it no secondary role. Its

interest is bound to be more recognized by increasingly large numbers, not however as its own interest, but as a group of interests most vital to the general welfare. The government must play a detached role and guard against excessive claims made by labor due to its shifting economic power. That labor has been sorely dealt with in the past cannot be denied. That it has a just cause for grievance but few informed people will question. Labor should and will claim a considerable influence, proportioned to its importance and to its capacity to participate, but in any event its role must remain subordinate to the general welfare. Federal and state governments should be in a better position to determine and protect the general welfare than either labor or industry which are involved in their own economic warfare and self-interest.

Whether or not national labor legislation is sponsored by political parties, it cannot but exercise a great influence upon politics. The connection between the political program of state or national administration and the material well-being of the general public is too intimate to leave the workers indifferent toward national politics. More and more, labor in state and national conventions, and through its federations and unions, will formulate resolutions of criticism or of approval; and political programs will be drawn up with an eye to meeting these demands. Industry, of course, if it runs true to form, will follow the same procedure in an effort to meet and offset the gains of labor. No better example of this is needed than the American Liberty League versus the C. I. O. in the last presidential campaign.

The growth of labor's influence. Undoubtedly, in the labor field we are on the eve of a remarkable growth of labor influence. Labor is not only finding fault and agitating, but is at work studying modern economic problems with great care. It is desirous of proving itself worthy of more direct participation in the management of industry and the control of capital. Most labor leaders today realize that there is no resemblance whatever between a political revolution and an economic one,

and they have come to see that the latter is a stupendous delusion.

More than ever labor is conscious of its power, and more than ever its true leaders are cautious against the use of that power. The dictates of human experience, and the none too sane judgment of some organizers, makes labor conscious of its oppressed state and the hopelessness of its previous programs. It is to be hoped that employers, employees and the government will not miss this opportunity to work out a uniform government-labor-industry policy.

The concerted efforts of progressive administrations at Washington, of far-seeing employers, and of experienced labor leaders have given us the organizations we have analyzed in the last two chapters of this book.

Whatever criticism may be made of these plans, opponents should not forget that there are two very distinct philosophies in American industrial labor relationship: the old idea of employer-employee individual relationship; and the idea of a national federally supervised policy as embodied in the National Labor Relations Act and the National Mediation Board which functions now in Washington.

The national idea brings out the urgent need of widening governmental interests, by bringing together representatives—employers, workers, experts, and humanitarians—and it will afford greater protection, fuller justice, a larger and “more abundant life” to the worker, without crippling production and hampering the employer in his legitimate efforts toward the increase of national and personal wealth. The program also embodies the idea of maintaining a permanent office with a competent staff and adequate resources to prepare with the utmost care the national labor-industry agreements which will secure labor-industry and social progress, and make its development safe and certain. We feel that after the long history of futile labor disputes this idea is here to stay. It is a waste of effort on the part of a few obdurate capitalists to attack as Fascistic or dictatorial the principles involved in this advance-

ment, for they rest upon a number of well-established facts. Employer and employee alike must realize that industrial peace is not only possible but practicable, but that it must be sought with concerted purpose. It is now an economic commonplace that the successful regulation of labor must, within clearly ascertainable limits, become national.

War conditions in 1917. Here in the United States, war conditions in 1917 forced the national administration to treat labor as a national question for the first time and to set up a War Labor Board to deal with it for the whole union. Similarly, world economic conditions now make some features of the labor problem a national one.

The period over which we have had legislation attempting to regulate industry and labor has been brief, but such legislation for the most part has had the support of union labor. As Mr. Wolman points out, "The spectacular rehabilitation of the United Mine Workers under the influence of the N. R. A. and the Bituminous Coal Conservation Act, and the increase in the membership of the railroad unions resulting from the application of the Amended Railway Labor Act, have strengthened the faith of many leaders of organized labor in the efficacy of governmental intervention."³⁰

The national movement, political and economic. Therefore this national movement takes the form of a political and economic understanding to bring about industrial peace with the interested parties—labor, capital and the public. A betterment of industrial relations for the good of all seems now to be a necessity. Hence we may say again, it is in vain that reactionary groups attack the idea which is the basis and inspiration of the national labor program advocates.

The scheme has two principal sets of enemies: those who derive profit, at times excessive and at times illegitimate, from the work of labor and the present economic organization; and those few who hope to bring about a state of things radically

³⁰ Wolman, Leo, *Ebb and Flow in Trade Unionism* (1936), p. 155.

opposed to it to satisfy their ambition,* or perhaps in good faith because they are impervious to the light of some recent experience.

We would fain believe that it is possible to draw from the facts as we have endeavored objectively to present them and from the history of labor strife an even more optimistic conclusion. A national labor policy will not only tend to the welfare of humanity, but out of it will grow a policy for the physical, moral and intellectual well-being of the wage-earning class which will thereby strengthen and consolidate our entire democratic system of government in an atmosphere of industrial peace and cooperation.

CHAPTER XI

CONTEMPORARY AND FUTURE NEED FOR SOCIAL LEGISLATION

Public attention focused on labor problems. The Social Security Act and the application of the Wagner Act to industrial disputes have brought again to the foreground of public attention one of the most controversial and persistent issues of labor relations, the issue of employees' representation and collective bargaining. Section 7(a) of the National Industrial Recovery Act and the various executive orders pursuant thereto creating the longshoremen, steel, and textile boards, the National Labor Relations Act, and the Guffey Act, have attempted to apply to industry generally a public policy hitherto limited to the railroads.¹ By their provisions, the federal government has affirmed the right of employees to be represented for purposes of collective bargaining by spokesmen of their own choosing without influence, interference, or coercion on the part of employers. These methods have undoubtedly stimulated organized dealings in industry. Company unions have diminished rapidly since 1933; trade unions have launched aggressive organizing campaigns with a rapidly growing membership.

With such developments, the fundamental difference of opinion always evoked by these issues has naturally been sharpened. To the business man it appears that the government's policy is unsatisfactory because it disturbs a pattern of relationships between management and men to which he has been accustomed. Any government, desiring to promote cooperative dealings between employer and employees to the fullest possible extent, may look forward to the strengthening of harmonious relationships by the government policies fostered during the past few years. It seems to the government that, left to themselves, executives and workers cannot achieve by direct deal-

¹ For a full account of government boards, see *Labor Relations Boards*, by Lewis L. Lorwin and Arthur Wubnis, The Brookings Institution (1935).

ings, free from the interference of outsiders, peaceful collaboration which will be to the interest both of industry and the public.

Dissension in organized labor. Government intervention in its later aspects has come at a time when organized labor is divided in its counsels and policies between the A. F. of L. and the C. I. O. This is unfortunate, because when a decision is handed down by the N. L. R. B. favoring either organization, the other charges discrimination. This of course makes it very difficult for the Board to work out a harmonious, smooth-working program between the employer and employee. Granting that some employers deal with their workers more fairly than others, the C. I. O. maintains that over industry as a whole, nothing can protect the workers' interest and standards as fully as unions free from all company affiliations. With the growth of corporations and large-scale industry, the C. I. O. believes that realistic equality of bargaining power demands that unions of employees extend beyond the plants in which any group may work; it demands the opportunity to engage trained "technicians," as employers do, and to develop in labor spokesmen that independence and bargaining skill which comes only with specialization within the labor organization itself.

Costs to the management of strikes and lockouts. It would seem from the foregoing discussion, however, that a more equitable policy, and at the same time a more secure one for both the employer and employee, would be a nationwide regulation of wages and working standards administered by an independent board. This will protect the decent employer as well as the worker from "cut-throat" competition of the minority, and from the emotional, radical, or selfish labor organizer. This study, like so many similar inquiries, shows that strikes and lockouts are expensive procedures to the management and to workers in industry as well as to the public.² Equally as im-

² Witte, Edwin E., in *The Government and Labor Disputes*, p. 1, placed the total cost of strikes in the decade 1916-1925 at \$12,982,048,000, of which \$46,000,000 fell on employers; \$1,804,000,000 on employees; and \$10,682,000,000 on the general public.

portant are various forces in American industrial life which give to such conflicts a peculiar degree of violence and upheaval. When disputes exist or are threatened, there is need not so much for a suppression of the workers, the labor agitators, or for an appeal for the "American way" by the employer, but for some method of promoting satisfactory settlement before strikes occur. The more that method is based on peaceful adjudication through government supervisory boards and commissions, the more all involved stand to gain. It is this consideration that gives special significance to successful government intervention provided by the railroad labor acts, the Canadian Industrial Disputes Investigation Act, and similar means.

Economic and political difficulties. It seems probable that the present economic "order" is facing a period of difficulties in which the major problems will have to be worked out upon quite different lines from those generally followed in the past. The industrial-economic system which has developed from earlier conditions has gotten far out of control, and the accumulated experiences of not only our own country, but of other countries where the situation is similar, will need be drawn upon to the utmost to find a solution for many social, economic, and political difficulties we face today. In the past, and for the most part in the present, we have had in operation a vast decentralized system in government as well as in industry. The outline of our federal government was designed for functions quite different from those it is now called upon to perform. Our system of mechanized industry is designed to produce on a large scale standardized commodities of various degrees of utility. More of these commodities are being made each year by fewer workers and better machines. They must find purchasers to make possible their continuous production. Toward this end, thousands of individual producers and distributors have invested their capital in manufacturing and distributing plants. Likewise, they must continue production if the millions of persons dependent upon employment for a livelihood are to earn a living.

Pending the major adjustments which must be made in order to enable our present economy to function for any of the economic classes with a substantial degree of normality, we are faced with the urgent social problems which our economic system creates. As has been indicated, the problems center mainly about the question of security of livelihood for the general population. The security has become, with the development of capitalism, increasingly less possible of attainment by the efforts of the individual worker. Those who fall into economic difficulties, having no program, have commanded attention by the very force of their numbers. Hence the necessity for legislation to supply the economic security which the wage system has denied the individual has become a reality.

Various plans attempted. The foregoing pages show that many attempts and many plans have been tried to give security to the worker, protection to the industrialist, and a program of social welfare to the community. The industrialists have presented plans, organized labor through unions of various types has presented plans, and privately organized groups have also attempted to inaugurate programs beneficial to both labor and capital which would at the same time benefit society as a whole. None of these schemes worked very well for long. As a consequence, it became obvious that some power greater than the interests directly concerned must intervene. Upon the national government fell this responsibility. The early attitudes and ideas of law makers were reflected in such laws as the Sherman Act, the Clayton Act, the Railway Legislation, etc.; later ones were reflected in legislation such as the Guffey Coal Act, the Social Security Act, the National Labor Relations Act, Fair Labor Standards Act, and this in larger measure in the past five years than in the previous forty-five.

Must the Wagner Act be amended? One of the outstanding questions being asked by labor, capital, and the public today this study did not answer: Is the Wagner Act adequate; has it gone too far and must it be amended? The Act is too recent to

give anything like a satisfactory answer to those queries. The Act was placed on the statute books July 5, 1935. Its constitutionality was in question until April 12, 1937. Five years of economic depression and labor discord had elapsed before the Act passed Congress, and seven had passed before its legality was determined. As was pointed out in the previous pages, the Act had a bad start. During the time that elapsed between its enactment and the Supreme Court test, lawyers for organized industry and independents advised industrialists to "pay no attention to it. It is unconstitutional and will never be enforced."

Besides getting off to a bad start there are several features of the Act that have been questioned: Is the Act broad enough: should it include farm laborers and others who are engaged in the modern processing of agricultural products for interstate commerce? Are they "industrial workers" under the Act? If so, how much modern farm labor will come under the jurisdiction of the NLRB? Another feature of the Act that is being questioned has to do with the practice of restoring striking workers to the payroll. It appears that no matter how serious may be the offenses committed by workmen who have left their jobs and gone on strike, if and when the Board has completed its investigation and made its decisions, if the unions comply therewith, the employer must take them back.³ If the employer is at fault, not only must he take them back, but with back pay.

3 *National Labor Relations Board v. Mackay Radio and Telegraph Co.*, 299 U. S. 534 (1937). A strike in the San Francisco plant was called. All men employed in this plant went on strike. The Company in order to maintain service brought employees from its Los Angeles, Chicago, and New York offices to fill the strikers' places. The strike soon failed and the strikers asked to return to work. The Company agreed to put them back to work but stated that as eleven men had been brought to San Francisco and had been promised that they might stay, the supervisor would have to handle the return of the striking employees in such a way as not to displace any of the men brought there. Thereupon local No. 3 presented a charge to the NLRB.

As a conclusion of law, the Board found that the company had engaged in unfair labor practices affecting commerce, and entered an order requiring,

Status of national legislation. It seems reasonable to expect that the Wagner Act will not be extended in the near future, and that it may be amended along the line of giving to industry at least some of the same protections that it grants to labor. Both the employer and employee, as well as the public, seem doubtful about going any further at this time in an effort to control industrial relations generally. Leaders of the movement seem willing to consolidate their grounds gained before taking another step.

The Report on Industrial Relations in Great Britain. The President's Commission on Industrial Relations in Great Britain, dealt with later in this chapter, effectively disposed of several misconceptions that have been circulated in the United States in attacking the National Labor Relations Act. Their report points out that the legal status of organized labor in Great Britain is comprised of the following points: (1) incorporation of trade unions is prohibited by law and registration or certification of unions is voluntary; (2) observance of the provisions of agreements by employers and unions in Great Britain "rests upon moral force rather than upon legal compulsion;" (3) British trade unions have a recognized legal status as well as legal immunity from any charge of restraint of trade, and with respect to their activities in contemplation of a trade dispute from any action for civil or criminal conspiracy or for any tortious act; and (4) unions in Great Britain are legally immune from suit in case of sympathetic strikes, unless such strikes extend beyond a given trade or industry and in addition are designed or calculated to coerce the government.

It now seems clear from this review of legislation that of the various legislative attempts to regulate and prevent industrial

among other things, that the company reinstate the men immediately to their former positions, with back pay.

Mr. Justice Roberts, in the decision of the Court, relies on Section 13 of the Act to support the decision: "Nothing in this Act shall be construed so as to interfere with or impede and diminish in any way the right to strike."

See also Chapter III of this work.

disputes, some form of national action is essential to success. What form federal legislation is to take and how for it should go is still debatable. Will it ultimately lead to compulsory arbitration by boards appointed by the government, for particular industries, or will it take the form of and extend the National Labor Relation Act? There is much to be said for further experimenting along the lines of the Canadian Industrial Disputes Act. As has been pointed out, for certain industries it accomplishes good results. More like it than any other legislation we have in this country are our Railway Labor Acts which have been remarkably successful. A complete discussion of national railway legislation is given above in Chapter VI.

It may well be that in time in this country, as has already happened in other countries, we must concern ourselves more with labor courts. With our present judicial system such special courts would no doubt offer certain difficulties. To determine the jurisdictional powers of the labor courts would probably be the most important task exacted of the legislator who would be called upon to lay down provisions for the establishment of a labor judiciary. Apart from the difficulties of a constitutional or administrative character with which he would be confronted, it would be necessary for the legislator to distinguish between judicial labor tribunals and other bodies, such as we now have as conciliation and arbitration committees, which are also designed for the adjustment of labor disputes. The legislator's difficulties will arise when he is called upon to distinguish between the different types of disputes which come within the purview of these different agencies, and as much as possible we must avoid giving rise to conflicts of jurisdiction between these same agencies as well as with the regular courts of law.⁴ It seems possible that if and when a good share of American labor is controlled by either federal or state legislation, we may need specialized courts to hear the side of the employer as well as

⁴ For a discussion of the labor judiciary, see *Labor Courts*, International Labor Office, Series A (Industrial Relations) No. 40, Geneva, 1938; Washington Branch, 734 Jackson Place, D. C.

the employee. Of course that could be done, as has been pointed out, by amending the Wagner Act, but since our court dockets are now crowded, and since labor dispute cases should be heard as soon as possible, it is not beyond the realm of possibility to think of labor courts for this country.

A more extensive consideration of these problems is beyond our present scope. What we have tried in general to show is that the solidarity of a community, whether it be in labor or in politics, depends not on the absence of differences within, but rather on the presence of certain legal agencies for the liberation and the consequent modification or adjustment of these differences. Dr. R. M. MacIver points out two factors that make for community disorganization: (1) the coercion of group by group, by social and economic pressure or discrimination directed against economic classes or minorities; and (2) the lack of free contacts, or cultural aloofness as expressed in the contempt of group for group, a feeling which often means the failure of one to comprehend the life of another.⁵

The Wagner Act as our first real effort to intervene in industrial disputes. We have discussed the Wagner Act at some length because it is our first great effort to regulate by federal legislation all industries engaged in "interstate commerce," and also because its implications have begun the first peace-time effort to organize the labor market. While the development of coordinate labor exchange will not eliminate unemployment, it will serve as a clearing-house arrangement for bringing together vacancies and applicants for work. The Act also provides for a well-guarded scheme of limited unemployment insurance for workers of established residence. Further, the Act provides for a retirement fund. The 1938 Congress enacted the fourth step, that of establishing a minimum wage and maximum hours law. These four programs will prepare the way for the protection of our wage-earning population.

⁵ *Society*, Book I, Chap. 9, p. 165.

Deficiencies of our national legislation. At least three deficiencies will be noted in our review of national legislation. One is the item of health insurance for the individual worker and his family. This seems an unnecessary shortcoming. A straight assessment basis of insurance is logical, and experience in other industrial countries has demonstrated that it is practical. The problem, it seems, is not to increase the sum total of our national health bill; it is how to achieve more effective results with the existing total cost for the benefit of all groups of the population. Among professional as well as among lay observers, there has developed a growing demand for appropriate measures, consistent with the private practice of medicine, to break down the economic obstacles separating those in need of adequate medical services and those trained and with ability to furnish such services. It now seems that beginnings in the United States must be made, if we are to round out our existing national structure of social security, by bringing within its scope perhaps the most important single cause of economic and social insecurity.⁶

Security and the success of American business. The second defect is that our whole security program is based upon the success of business, the "American way." Business bears the main part of the cost for social insurance and for the relief of the national treasuries. Suppose our national and international trade falls so low that business becomes unprofitable; will investors continue to invest? If the tax on payrolls should continue to rise, will operators begin to make way for labor-saving devices and thus displace even greater numbers of workers?

6 Dr. John A. Kingsbury states: "There is no greater need today in promoting the welfare of our Nation than a comprehensive national health program. Within the framework of our economic system and under existing conditions of social insecurity compulsory health insurance must have an important place in any such program. No provision was made in the Social Security Act to enable self-supporting families of small and moderate incomes to budget against the loss of wages suffered on account of disabling illness and no protection against the cost of medical care." *The American Labor Legislation Review*, Vol. XXVII, No. 2 (1937), p. 43.

Since these questions are largely economic in character, and since it is too soon to predict what will happen to our national program of settling labor disputes through federal legislation, we must leave them to some future study.

Need for a national child labor law. The absence of any straight-out national law on child labor is surely an issue that must be settled by our national Congress before our program for social security is complete. True, such federal legislation as the National Industrial Recovery Act and the National Labor Relations Act have important provisions with respect to child labor; the Fair Labor Standards Act effective October 24, 1938, contains provisions excellent in this respect. Under the new statute, employers engaged in interstate commerce are prohibited from shipping goods manufactured in their plant, if within thirty days of the date of shipment any children under sixteen years of age were in their employ. A certificate of age, proving that a child worker is at least sixteen years, will be accepted as *prima facie* evidence of employment under the law. In ruling number one, issued by the Children's Bureau (the enforcing agency), thirty-one states were listed in which an employment certificate issued in accordance with the state law will be accepted as meeting federal proof-of-age requirement. It is clear however that this legislation will not take the place of uniform national laws regulating hours, wages, age, and working conditions of children.

Attempts by Congress to pass a federal Child Labor Law. The first attempt to pass such a federal law was in 1906, when the Beveridge-Parsons bill was introduced into Congress in December of that year. The bill provided that the carriers of interstate commerce, the railroads and steamboat lines, should not transport the products of any factory or mine that employed or permitted the labor of children under fourteen years of age. In January, 1906, Senator Beveridge made his famous three-day speech for the bill, but without success. It failed to pass. This bill was again presented in 1906 and was later added as

an amendment to the District of Columbia child-labor bill, but failed to come to a vote in either house. Senator Lodge also proposed a similar bill in 1907; this was referred to the Committee on Education and Labor, but was never reported. The Kenyon bill, another virtual repetition of the Beveridge bill, was presented in every Congress until 1914.

In December, 1912, and again in 1914, the progressive element introduced the Copley-Poindexter bill. This law defined as "anti-social child labor" the employment of a child under fourteen years in any mill, factory, cannery, workshop, manufacturing or mechanical establishment, or of a child under sixteen years in any mine or quarry or in any other dangerous, injurious or immoral occupation; and it prohibited the shipment in interstate commerce of the products of such labor. While this bill was still being considered, the Palmer-Owen bill was introduced. This differed from any of the preceding bills. Instead of putting the burden upon the carrier, it made it a misdemeanor for the producer, for the man who was responsible for the employment of the labor itself, to ship in interstate commerce the products of any mine or quarry where children under sixteen were employed; the products of any mill, cannery, workshop, factory, or manufacturing establishment in which children under fourteen were employed; or in which children between fourteen and sixteen were employed either more than eight hours a day or between seven o'clock at night and seven o'clock the morning following. This bill was passed by the House on February 15, 1915, by a vote of 233 to 43, but was killed in the Senate on the last day of the session.

Finally, the Keating-Owen bill, repeating the substance of the Palmer-Owen bill, was signed by the President on September 1, 1916, went into effect a year later, but was declared unconstitutional June 3, 1918.⁷ This was a check, but not a defeat. If federal legislation could not be achieved through use of the

⁷ *Hammer v. Dagenhart*, 247 U. S. 251 (1918); the U. S. Supreme Court held the Act unconstitutional on the ground of undue extension of the power to regulate interstate commerce.

power over interstate commerce, there were thought to be other ways of bringing about the same result. On November 14, 1918, Senator Pomerene introduced the federal taxing measure as an amendment to the Revenue Act. The standards were exactly the same as those established by the first federal child-labor law, but the new law was based on the taxing power of Congress—a tax of 10 per cent in excess of all other taxes to be levied upon the entire net profits from the sale or disposition of products of mills, canneries, workshops, factories, manufacturing establishments, mines, or quarries employing children contrary to the specific standards laid down by the Act. This measure passed February 24, 1919, and became effective April 25, 1919, but it also was declared unconstitutional by the Supreme Court on May 15, 1922.⁸

Proposed constitutional amendment. But the problem still remained and in June, 1924, Congress adopted a resolution proposing a constitutional amendment⁹ permitting Congress to prohibit and regulate the labor of children under eighteen. To become effective, the amendment would have to be ratified by thirty-six of the states. By October, 1938, only twenty-eight states had ratified it.¹⁰

The states have done much to regulate the wages, hours, and general working conditions of children. But it seems obvious

8 *Bailey v. Drexel Furniture Co.*, 259 U. S. 20, 42 Sup. Ct. 449. In this case the Court argued that the Act was regulatory and that Congress could not extend its powers into the field of social legislation.

9 Sec. I, "The Congress shall have power to limit and prohibit the labor of persons under eighteen years of age."

10 At present twenty-eight states have ratified:

Arizona	1925	Kentucky	1937	North Dakota	1933
Arkansas	1924	Maine	1933	Ohio	1933
California	1925	Michigan	1933	Oklahoma	1933
Colorado	1931	Minnesota	1933	Oregon	1933
Idaho	1935	Montana	1927	Pennsylvania	1933
Illinois	1933	Nevada	1937	Utah	1933
Indiana	1935	New Hampshire	1933	Washington	1933
Iowa	1933	New Jersey	1933	West Virginia	1933
Kansas	1937	New Mexico	1937	Wisconsin	1925
				Wyoming	1935

that the need for this legislation cannot be left to the states alone to handle for several reasons: first, because they cannot act uniformly (at least they never do); second, they cannot act efficiently; and finally, where one state acts well and another state does badly, the business man in the latter state has an unfair advantage over the business man in the former state. If there is only one state where the evil of child labor remains unregulated or which adopts lower standards of regulation, it tends to nullify much of that which the other forty-seven states have done.

The need for governmental action. Our study of the various labor problems and our review of the last forty years of the efforts of labor organizations and employers to solve these problems have produced two conclusions: labor problems still exist, perhaps even more serious now than ever before; and the attempts of workers and employers to cope with them have left many workers and groups throughout the country without the protection to which, as members of a democracy, they seem entitled. This study tends to show that for nearly a half-century organized labor has pursued a variety of policies and tactics; yet in general it has failed to bring to the mass of workers a living of health and decency. It is also true that liberal and progressive employers, while perfecting a more enlightened and less repressive way to make profits, have as a whole fallen far short of advancing the workers' well-being. The worker is still economically poor, insecure, under-employed, and unemployed. It follows that there is ample need for some other agency to enter the field.

As has been suggested throughout this study, the only other agency that can take a hand is the government. This is not to say that the government should establish arbitrary laws regulating the conduct of the employer and employee in every detail, but rather it should establish minima and maxima procedures and agencies through which a legalized policy can be maintained. The conclusion that state intervention is necessary rests on the assumption that it is socially desirable for wage-earners to live

on a healthy and secure plane, participating freely in industrial government; and that the state should interfere in the economic relationships of its citizens when the extremes of these situations are met. The function of government will be to establish agencies and enforce laws which prevent exploitation, equalize opportunity, and help each person to realize his potentialities, thereby becoming an asset rather than a social liability.

The division of powers between state and federal government.

Our form of government with the division of powers among many state governments and the national government, makes uniformity of labor legislation almost impossible. Progressive and liberal states are at a disadvantage, for their restrictive efforts may be largely nullified by the conservatism of certain other more backward states.

Moreover, as we have seen, the division of powers between the states and the federal government has not always worked out well. The federal Constitution definitely limits Congress in the handling of labor questions. The federal government is one of delegated powers; whereas the states may exercise under the police power authority to deal with every subject not covered by the powers delegated specifically to Congress, nor prohibited by the Constitution to the states of the United States.

The federal labor law and federal workers. National labor regulation, therefore, has been confined to federal employees, and to any others who may be affected by the delegated authority to regulate commerce between the states and with foreign countries and to tax citizens and businesses. Federal labor laws in the past have dealt only with federal workers in the District of Columbia, post-office employees, laborers on federal projects, employees on interstate railroads, and seamen. But under modern conditions the markets of most employers are national or international, or at least sectional. It is thought that through the Fair Labor Standards Act, Congress has been able to legislate for almost all groups of employees and on almost all sorts of matters.

The unconstitutionality of labor law. The main difficulty arising out of our form of government is the power of the judicial branch to declare legislation unconstitutional and void. We have experienced this problem since our nation became industrialized. Many states have attempted to legislate regulation of hours and wages for women and children in industry only to have laws declared unconstitutional by the United States Supreme Court. The Kansas state legislature in 1920 created a Court of Industrial Relations only to have the United State Supreme Court three years later declare a part of the act unconstitutional.¹¹ Two years later the Supreme Court spoke again, holding the Act invalid as applied to hours regulation in packing industries.¹² The idea of the framers of the Constitution was to let alone farmers, craftsmen, and merchants and confine or restrict governmental regulation to preserving each enterpriser's freedom to make contracts with others. The framers of the Constitution had in mind (and the courts have protected the idea) that no statute was to be permitted to violate this liberty of contract except under unusual circumstances. The federal Constitution—and to a lesser extent the various state constitutions—have been obstacles to progressive labor legislation due to the restrictions they impose. Under modern conditions freedom of contract and equality of bargaining power still exist to a great extent in certain types of industrial relationship; however, such dealings have almost disappeared in individual employer-employee relationships. Yet the Constitution, when interpreted by conservative judges, greatly hampers all efforts to protect wage-earners from exploitation and to increase their bargaining power.

Both state unemployment compensation laws and the Social Security Act have been attacked upon constitutional grounds, but their general validity is now definitely established. A number of state supreme courts have upheld their state laws, and

11 *Wolff Packing Co. v. Court of Industrial Relations*, 262 U. S. 522 (1923). See also Chapters I and V of this study.

12 *Wolff Packing Co. v. Court of Industrial Relations*. 267 U. S. 552 (1925).

the Alabama law has been upheld by the United States Supreme Court.¹³

One of the main reasons for the slow growth of legislation regulating hours and wages for men has been the doubtful attitude of the courts. Commons and Andrews state that "in this matter, however, the courts have merely reflected prevailing public opinion which has been slow to awaken to the need of restricting men's hours in general employment."¹⁴

The effort to spread work. Early in the serious unemployment period, the American labor interests strongly advocated hours limitation by law. The hope was that this would be a means of "spreading" work among a larger number of workers. In 1932 and again in 1933, labor supported a bill in Congress providing for a thirty-hour week, and in 1933 this measure was passed by the Senate. However, in 1933 this idea was dropped upon the enactment of the National Industrial Recovery Act; as was pointed out in Chapters IV and V, this was a much broader and more far-reaching experiment in minimum wage regulation. In the 597 codes of fair competition set up under this Act, minimum wage rates were established in each industry for men as well as women and minors. However, the law was declared unconstitutional by the Supreme Court in 1935.¹⁵ In 1936 the well-known "prevailing wage" requirement, which had long been applied to public works contracts, was extended by Congress so that such provision must be included in every contract entered into by any department of the federal government or its agencies "for the manufacture or furnishing of materials, supplies, articles, and equipment in any amount exceeding \$10,000." Exception, however, was made when these

13 *W. H. H. Chamberlin, Inc. v. Andrews*, 271 N. Y. R. 1 (1926); *Howes Brothers Co. v. Mass. Unemployment Compensation Commission*, 5 N. E. (2d) 720 (1936); *Gillum v. Johnson*, 62 Pac. (2d) 1037 (1936); *Beeland Wholesale Co. v. Kaufman (Ala.)*, 174 So. 516 (1937).

14 *Principles of Labor Legislation*, p. 116.

15 *Schechter Poultry Corp. v. U. S.*, 295 U. S. 495 (1935).

"may be bought in the open market." The Secretary of Labor, who enforces the Act, must determine the prevailing wage.¹⁶

Minimum wage and extremely low wage. As was pointed out in Chapter I, the purpose of minimum wage legislation is the raising of extremely low wages. The statutes of the Australian states, except Victoria, refer to the minimum wage as a living wage. Australia now requires every minimum prescribed to be "sufficient to enable the average worker to whom it applies to live in 'reasonable' comfort, having regard to any domestic obligation to which such average worker would ordinarily be subject."¹⁷ In 1921 New Zealand, and in 1928 Tasmania, amended their legislation providing for alteration of awards according to fluctuations in cost of living. In 1927 a singular step was taken in New South Wales when a system of family allowance was introduced. As amended in 1929, this legislation provides for a minimum wage rate fixed for a family with one child and for special allowances to be paid for additional children out of general funds raised by payroll taxes.

Different standards in wages for men and women. Differing wage standards for men and for women have been worked out in Australia. The Australian legislation advances upon the notion that since a man must normally maintain a family, whereas a woman ordinarily supports herself alone, a living wage for male workers should be higher and the minimum for female workers is fixed on that basis. The minimum cannot be based on exceptional cases. These wage determinations have been much influenced by the decisions of the Commonwealth Arbitration Courts which settle interstate trade disputes and have established as the minimum for unskilled laborers a sum sufficient to cover "the needs of the average employee regarded as a human being living in a civilized community." In this regard the minimum wage legislation of Australia has done what we have tried to do, and what we hope will be the develop-

¹⁶ Public No. 846, 74th Congress (1936).

¹⁷ Western Australia, Industrial Arbitration Act (1912), No. 57, p. 84.

ment of our Fair Labor Standards Act; namely, that a minimum will become a living wage, not a mere subsistence wage.

State laws and minimum wages. All American state laws define in general terms the principle to be followed in fixing wages which are a living wage. In most of these laws statements such as "the necessary cost of living, to maintain the health and welfare" and the "public good" are found. However, in these early state laws the Australian standard for women workers was used—that is, the cost of living of the entirely self-supporting woman.

The Fair Labor Standards Act. The Fair Labor Standards Act or the Federal Wages and Hours Law, as it is more popularly known, makes no exception for men and women. The Act covers all engaged in manufacturing, mining, handling or in any other manner working on goods for commerce. Employees are considered engaged in these fields if they are employed "in any process or occupation necessary to the production of goods for commerce."

When the Act went into effect in October, 1938, it was estimated that some 11,000,000 employees were covered by its provisions, that 1,500,000 would benefit by the shorter hours, and 750,000 would benefit from the pay increase. As was pointed out, the coverage extends to women and men alike employed in "trade, commerce, transportation, transmission or communication among the several states or from any state to any place outside thereof." The law exempts, among others, employees in *bona fide* executive, administrative, or local retailing capacity. Those affected by the Act, who are according to its standards underpaid, get twenty-five cents an hour now (with time-and-a-half for overtime); and within seven years, as close as possible to the forty cents an hour which is the law's ideal. The working week for those covered by the Act is immediately shortened to forty-four hours, and eventually to forty, with time-and-a-half for overtime. Those ends the administrator must accomplish without "substantially curtailing employment or earning power."

The floor and ceiling of wages and hours. What this law actually does is to establish a floor for wages and a ceiling for hours, the standards to be the same throughout the United States. Under this legislation it will be impossible for industries to move across state boundaries and with cheap labor to set up unfair competition. A factory in one state with a good labor law will not have to face a factory in another state with bad labor laws, which permit industry to overwork and underpay its employees and thereby to sell for less.

In time the result should be more settled conditions and less irritation on the part of both industry and labor. It ought to mean more money to spend and more efficient work. If an employer must pay overtime for more than forty-four hours of work a week, he will get in extra workers, which in turn ought to lessen the burden of unemployment. On the other hand, in considering the long range economic effects of the law, the question must be raised as to whether or not it will result in displacement of low-paid workers by machinery. Such workers are now doing by hand what the machine might accomplish even more cheaply and perhaps more efficiently.

Another question pushed to the fore by the Fair Labor Standards Act is its effect on the tendency toward decentralization of industry. Will higher wages and shorter hours force out of business the marginal producer in various fields? No sooner had the law been put into effect than a number of pecan-shelling firms, which had been paying ten to fifteen cents an hour, shut down. The tobacco industry was reported to have laid off thousands of employees rather than raise their wages to twenty-five cents an hour. Telegraph companies and many other industries did likewise. Are these shutdowns only temporary? If these small plants are closed, the business will fall into the hands of larger concerns and perhaps the decentralization tendency will be reversed. Higher wage minima may also have a tendency to discourage location of branch plants in areas where living costs are low and thus further reverse the decentralization process, thereby creating new social problems of population shifts, housing, etc.

In brief, while the wages and hours law has brought to the fore consideration of its many economic and social implications, full answer to these questions must await further experience with the Act and the test of its validity in the courts. It does, however, seem certain that this legislation or similar legislation will eventually be enforced and thereby ameliorate the working conditions of employees in such industries as coal and steel, as was described in Chapter VI, VII.¹⁸ Such legislation also should go a long way toward eliminating industrial warfare in those industries that are covered by the Act.¹⁹

The report of the President's Commission on Industrial Relations in Great Britain. The Report of the President's Commission on Studies of Industrial Relations in Great Britain found that improved industrial relations in that country have been reflected by the trend of hours of work which have been reduced during the last twenty years from fifty-four to forty-eight,²⁰ and also by the changes in the real wage level which for manufacturing and railways has risen approximately 16 per cent since 1924, according to the figures of the Minister of Labor. The Commission also reported that the factors of wages, hours, and improved machinery, better technology and improved organization of industry, have contributed to a higher standard of living.

Social legislation in England. The most important social legislation deals with unemployment insurance, old age insurance, medical aid with sickness compensation and improved housing. Unemployment insurance, begun in 1911, now covers over thirteen million workers with equal contributions from workers, employers, and the government.

18 "The Government and Industrial Disputes in Coal," Chap. VI above.

19 See Chap. III above, "Legislation and Administrative Orders Affecting Labor Relations."

20 *The Report of the President's Commission on Studies of Industrial Relations in Great Britain*, submitted to the U. S. Dept. of Labor, Sept. 1, 1938. Chap. III, "Evolution of Existing Methods of Settling Industrial Disputes."

Every major country except the United States has long ago provided in some way for partial compensation for loss of earnings and for medical care through compulsory health-insurance systems. First developed in a general system in Germany dating back to a statute adopted June 15, 1883, at the present time compulsory health insurance has been adopted by twenty-nine countries with a combined population of over 500,000,000.²¹ The British system requires that all persons between sixteen and sixty-five, engaged in manual labor under a contract of service, must become insured. The same is true of all persons likewise engaged in non-manual labor whose rate of wages is not in excess of 250 pounds per year. The law places a legal obligation on the employer to see that his eligible employees are insured. Governmental inspectors examine each year from 15 to 25 per cent of the establishments including those most likely to violate the law, to see that their obligation is observed.

Provisions of the health insurance systems. The funds required to finance "sickness" insurance in the various countries generally amount to from 4 to 7 per cent of the wage-earners' payroll and are obtained from contributions by the insured, the employers, the public treasury, or some combination of these.²²

These compulsory health insurance systems provide for partial compensation for loss of income and for medical benefits, with a waiting period in most countries ranging from a few days to a week; financial benefits at flat rates, or with exceptions, at from two-fifths to two-thirds of the wages paid the eligible insured while disabled; and for maxima of thirteen weeks to fifty-two weeks in a period of twelve months. There are in some cases benefits paid in reduced sums for a second further period of disability.

²¹ Millis, Harry A. and Montgomery, Royal E., *Labor's Risk and Social Insurance* (1938), p. 271.

²² *Studies and Reports*, International Labor Office, Series M, No. 12 and No. 13 give details concerning contributions.

Methods of settling industrial disputes. The final item of interest in the Commission's Report is found in the method, rules and agreements for settling disputes. Basic changes in wages and hours are commonly negotiated by the national unions, not with each employer individually but with associations of employers. If negotiations of these basic subjects fail, resort is generally had either by the terms of the agreement or by mutual agreement at the time to some impartial agency whose decision is generally followed, though the parties rarely find themselves disposed to follow it. In this respect the process resembles our national railway legislation.²³ It is interesting to note that this Commission found these same methods for settling industrial disputes used in Sweden.

Labor conditions in Sweden as reported by the President's Commission. Sweden, however, goes even further. Strikes and lockouts in connection with any dispute are restricted (a) as to the validity, existence, or correct interpretation of a written collective agreement; (b) as to whether a particular act constitutes an infringement of an agreement; (c) in order to enforce a provision which is to come into operation on the expiration of the agreement; and (d) in order to assist others by sympathetic strike or lockout or other hostile action, unless the original strike or lockout is itself legal.²⁴

The Swedish system also includes government conciliators who may either offer mediation service or be called upon by either party to dispute; and strikes or lockouts may not be undertaken until after recourse has been had to such mechanisms.

The Committee found that social legislation had contributed to sound industrial relations in Sweden. It was pointed out that labor unions "have placed no obstacles in the way of labor-saving machinery but insist that part of the benefit of these

²³ See Chapter V above, "The Development of National Legislation Affecting Railroads—The Mediation Board."

²⁴ *The Report of the President's Commission on Industrial Relations in Sweden*, submitted to the Secretary of Labor, Sept. 19, 1938.

improvements in method should go to the worker." As a result, power per worker has increased about 25 per cent since 1924 and production per worker 33 $\frac{1}{3}$ per cent. The increase in "real wages" on the other hand had been about 21 per cent at the end of 1936.

In Sweden old-age pensions and unemployment insurance are provided and all adult citizens contribute irrespective of the character of their work. Unlike those in England the contributions are made entirely by the individual, supplemented by the government. Workmen's compensation for industrial injuries is borne entirely by the employers.

The Workers Educational Association as a factor. A factor contributing to improved industrial relations in Sweden has been the better understanding of economic problems brought about by the Workers Educational Association, formed in 1912 to educate the workers and working class leaders. This would seem to be a policy worth following in this country. Most of our workers have some education, but few of our leaders know more than a vague general outline of their rights and duties when it comes to leading or organizing labor at the time of industrial disputes.

BIBLIOGRAPHY

The sources that follow are selected because they are among the more important contributions and because they represent the best development of certain points related to the subject under discussion.

For the investigator who wishes further intensive reading, the bibliographies contained in most of the books cited will suggest additional sources, especially the bibliography in the *Principles of Labor Legislation* by J. R. Commons and J. B. Andrews, 4th revised edition, July, 1937.

- Anthracite Bureau of Information, *Bulletin*, 1926, p. 18.
- Anthracite Bureau of Information, *The Anthracite Strike of 1922*.
- Anthracite Coal Industry Commission, *Ad Interim Report*, Penn., 1937.
- Anthracite Coal Industry Commission, Ernest, M. L., *Report*, 1937.
- Armstrong, Barbara, *Insuring the Essentials*. The Macmillan Co., New York, 1932.
- Barnes, Harry E., *History of Western Civilization*. Harcourt, Brace and Co., New York, 1931.
- Berman, Edward, *Labor and the Sherman Act*. Harper and Bros., New York, 1930.
- Bogen, Jules Irwin, *The Anthracite Railroads*. The Ronald Press Co., New York, 1927.
- Bryce, James M., *The American Commonwealth*. The Macmillan Co., New York, 1890.
- Burns, Eveline M., *Toward Social Security*. McGraw-Hill Book Co., New York, 1936.
- Byer, Herman B., *Prison Labor in the United States*. Bulletin No. 595, U. S. Department of Labor, Bureau of Labor Statistics, Washington, D. C., 1932.
- Clark, John Bates, *The Distribution of Wealth*. The Macmillan Co., New York, 1899.
- Corwin, Edward S., *The Commerce Power versus States Rights*. Princeton University Press, Princeton, 1936.
- Daugherty, Carroll Roop, *Economics of the Iron and Steel Industry*. New York Public Affairs Committee, Inc., New York, 1933.
- , *Labor Problems in American Industry*. Houghton Mifflin Co., New York, 1936.
- Davis, Horace B., *Labor and Steel*. International Publishers, New York, 1933.
- Devine, Edward T., *Coal*. American Review Service Press, New York, 1925.
- Dewey, D. R., *National Problems*. Harper and Bros., New York, 1907.
- Douglas, Paul H., *Real Wages in the United States*. Houghton Mifflin Co., New York, 1930.
- Downey, E. H., *History of Labor Legislation in Iowa*. The State Historical Society of Iowa, Iowa City, 1910.
- Elliott, W. Y., "Sovereign States of Sovereign Groups." *American Political Science Review*, Vol. XIX, August, 1935.

- Federal Trade Commission, Report, *Premium Prices of Anthracite*, July 6, 1925.
- Federation of American Engineering Societies, *The Twelve Hour Shift in Industry*. E. P. Dutton and Co., New York, 1922.
- Frankfurter, Felix and Greene, Nathan, *The Labor Injunction*. The Macmillan Co., New York, 1930.
- Givens, M. B. and Wolman, Leo, *Recent Economic Changes*. National Bureau of Economic Research, New York, 1930.
- Gompers, Samuel, "The Right to Strike," Editorial, *American Federationist*, Feb., 1916, p. 809.
- Herring, E. P., *Public Administration and the Public Interest*. McGraw-Hill Book Co., New York, 1936.
- Hobhouse, L. T., *The Metaphysical Theory of the State*. The Macmillan Co., New York, 1918.
- Hunt, E. E., Tryon, F. G. and Willets, J. H., *What the Coal Commission Found*. Williams and Wilkins, New York, 1925.
- Hutchins, B. L., *A History of Factory Legislation*. P. S. King and Son, London, 1911.
- Ihler, John, *Housing*. National Housing Association, 1932.
- Information Service, *Collective Bargaining in Steel*. Vol. XVI, No. 39. 1937.
- Labor Courts*. International Labor Office, Series A (Industrial Relations), No. 40, Geneva, (Washington Branch, 734 Jackson Pl.), 1938.
- Johnson, J. E., *Government Regulation of the Coal Industry*. The Reference Shelf, H. W. Wilson Co., New York, 1926.
- Jones, Eliot, *The Anthracite Coal Combination in the United States*. Harvard University Press, Cambridge, 1914.
- Keir, Malcolm, *Labor Problems from Both Sides*. The Ronald Press Co., New York, 1938.
- Kingsbury, John A., "Health Insurance in a National Program." *American Labor Legislation Review*, Vol. XXVII, No. 2, Sept., 1937.
- Landis, James J., *Labor Law*. The Foundation Press, Chicago, 1934.
- Lebow, Sylvan, "Bootleg Coal". *Review of Reviews*, Vol. XCV, March, 1937.
- Lorwin, Lewis L. and Wubnig, Arthur, *Labor Relations Boards*. Brookings Institution, Washington, D. C., 1935.
- Lovett, J. L., Laidler, H. and Thomas, N., *The Government Control of Coal*. The Vanguard Press, New York, 1938.
- MacIver, R. W., *Society*. Farrar and Rinehart, New York, 1937.
- Mayers, Lewis, *The Federal Service*. The Brookings Institution, Washington, D. C., 1922.
- Mead, R. R., *An Analysis of the Decline of the Anthracite Industry Since 1921*. University of Pennsylvania, Philadelphia, 1935.
- Minutes of the Meeting of the Public Committee on Coal*, 1921.
- Millis, Harry A. and Montgomery, Royal E., *Labor's Risk and Social Insurance*. McGraw-Hill, N. Y., 1938.
- Mitchell, John, *Organized Labor*. American Book and Bible House, Philadelphia, 1903.

- Mitchell, Broadus and Mitchell, Louise Pearson, *Practical Problems in Economics*. Henry Holt and Co., New York, 1936.
- Mumford, J. K., *Anthracite*. New York Industries Publishing Co., New York, 1925.
- National Industrial Conference Board, *The Competitive Position of Coal*, 1934.
- New York State Legislature, *Report of Committee Created in 1922*, Charles P. Lockwood, Chairman.
- Peterson, Florence, *Strikes in the United States, 1880-1936*. Bulletin No. 651, U. S. Department of Labor, Bureau of Labor Statistics, Washington, D. C., 1938.
- Pfiffner, John M., *Public Administration*. The Ronald Press Co., New York, 1935.
- Report of the Commission of Inquiry, Interchurch World Movement, *Public Opinion and the Steel Strike*. Harcourt, Brace and Co., New York, 1921.
- Roberts, Peter, *The Anthracite Coal Industry*. The Macmillan Co., New York, 1904.
- Rockefeller, J. D., Jr., *The Colorado Industrial Plan*. (Pamphlet), 1916.
- Selekman, Ben, *Postponing Strikes*. Russell Sage Foundation, New York, 1924.
- , *Employees' Representation in Coal Mines*. Russell Sage Foundation, New York, 1924.
- , *Sharing Management with the Workers*. Russell Sage Foundation, New York, 1924.
- Smith, R. H., *The United States Employment Service*. Monograph No. 28, Institute of Government Research, Washington, D. C., 1923.
- Smith, R. H., and Bradway, J. S., *Growth of Legal Aid Work in the United States*. Department of Labor, Bureau of Labor Statistics, Washington, D. C., Bulletin No. 607, 1936.
- Spero, Sterling, *The Labor Movement in a Government Industry*. George H. Doran Co., New York, 1924.
- , *Problems of the American Public Service*. McGraw-Hill Book Co., New York, 1935.
- Suffern, Arthur E., *Conciliation and Arbitration in the Coal Industry of America*. The Macmillan Co., New York, 1915.
- , *The Coal Miners' Struggle for Industrial Status*. The Macmillan Co., New York, 1936.
- Taylor, F. W., *Principles of Scientific Management*. Harper and Bros., New York, 1914.
- Twentieth Century Fund, *Labor and the Government*. McGraw-Hill Book Co., New York, 1935.
- Unemployment Benefits*, Wisconsin Industrial Commission. Report of V. Wrabetz, Chairman, to Governor LaFollette, Madison, Wisconsin, Aug. 1, 1937.
- United Mine Workers of America, *Proceedings of the Twenty-fifth Annual and Second Biennial Convention*, 1916.

- United States Coal Commission, *Reports*, 2 Volumes, 1923 and 1925.
- United States Commission on Industrial Relations, *Report on the Colorado Strike*. George P. West, Chairman, Washington, D. C., 1915.
- United States Government Manual, 1935*, An outline of the functions and organization of the federal government, including agencies of both a permanent and emergency character. Issued currently under the auspices of the National Emergency Council, Washington, D. C.
- United States Steel, *Annual Reports*. 25th (1926), 30th (1931), 31st (1932), 32nd (1933), 34th (1935), 35th (1936).
- Van Kleek, Ben and Mary, *Employees' Representation in Coal Mines*. Russell Sage Foundation, New York, 1924.
- Warne, C. E., and Goddie, M. E., "Eleven Years of Compulsory Investigation of Industrial Disputes in Colorado," *Journal of Political Economy*, Vol. XXXV, Oct., 1937.
- Wilson, W. W., "Plan for Peace in Colorado," *The Survey*, Vol. XXXII, Sept. 19, 1914.
- Witte, Edwin E., *The Government in Labor Disputes*. McGraw-Hill Book Co., New York, 1932.
- Witman, Shepherd, L., *Visual Outline of Comparative Government*. Longmans, Greene and Co., New York, 1935.
- Wolman, Leo, *Ebb and Flow in Trade Unionism*. National Bureau of Economic Research, New York, 1936.

TABLE OF CASES CITED

- Adair v. U. S., 208 U. S. 161. (1908).
- Adkins v. Children's Hospital, 261 U. S. 525. (1923).
- Allgeyer v. Louisiana, 165 U. S. 578. (1897).
- Arthur v. Oakes, 63 Fed. 310. (1894).
- Associated Press v. N. L. R. B., 301 U. S. 103. (1937).
- Atkin v. Kansas, 191 U. S. 207. (1903).
- Barr v. Essex Trades Council, 53 N. J. Eq. 101. (1894).
- Blindell v. Hagen, 54 Fed. 40. (1893).
- Brotherhood of Railway and Steamship Clerks v. Texas & New Orleans R. R. Co., 24 Fed. (2nd) 426. (1928).
- Beeland Wholesale Co. v. Kaufman, (Ala.), 174 So. 516. (1937).
- Bunting v. Oregon, 243 U. S. 426. (1917).
- Carter v. Carter Coal Co., et al., 298 U. S. 238. (1936).
- Chicago, Milwaukee and St. Paul R. R. Co. v. State of Wisconsin, 238 U. S. 491. (1915).
- Coppage v. Kansas 236 U. S. 1. (1915).
- Coronado Coal Co. v. United Mine Workers of America, 268 U. S. 295. (1925).
- Dorchy v. Kansas, 264 U. S. 286. (1924).
- Ellis v. U. S. 206 U. S. 246. (1907).
- Exchange Baking and Restaurant, Inc., v. Rifkin, 245 N. Y. 260. (1927).
- Gillum v. Johnson, 62 Pac. (2d) 1037. (1936).
- Godcharles v. Wigeman, 113 Pa. 431. (1886).

- Heim v. McCall, 239 U. S. 175. (1915).
Hitchman Coal Co. v. Mitchell, 245 U. S. 229. (1917).
Holden v. Hardy, 169 U. S. 366. (1897).
Hopkins v. Oxley Stave Co., 83 Fed. 912. (1898).
Howes Brothers Co. v. Mass. Unemployment Compensation Commission,
5 N. E. (2d) 720. (1936).
In Re Debs, 158 U. S. 564. (1895).
Kemp v. Division No. 241, 255 Ill. 213. (1912).
Kentucky Whip and Collar Co. v. Ill. Cent. R. R., 299 U. S. 334. (1937).
Knoxville Iron Co. v. Harbison, 183 U. S. 13. (1901).
Loewe v. Lawlor, 208 U. S. 274. (1908).
Louisville and Nashville R. R., v. Mottley, 219 U. S. 467. (1910).
McLean v. Arkansas, 211 U. S. 539. (1908).
Miller v. Wilson, 236 U. S. 373. (1915).
Munn v. Illinois, 94 U. S. 113. (1876).
N. L. R. B. v. Friedman-Harry Marks Clothing Co., Inc., 299 U. S. 535.
(1936).
N. L. R. B. v. Fruehauf Trailer Co., 299 U. S. 534. (1936).
N. L. R. B. v. Jones and Laughlin Steel Corp., 299 U. S. 534. (1936).
N. L. R. B. v. Penn. Greyhound Bus Lines, 301 U. S. 49. (1936).
People v. Marcus, 185 N. Y. 257. (1906).
Ramsey v. People, 142 Ill. 380. (1892).
Riley v. Mass., 232 U. S. 671. (1914).
Schechter Poultry Corp. v. U. S., 295 U. S. 495. (1935).
Stettler v. O'Hara, 243 U. S. 629. (1917).
Stafford v. Wallace, 258 U. S. 495. (1921).
Swift & Co. et al. v. U. S., 196 U. S. 375. (1904).
Texas & New Orleans R. R. Co. v. Brotherhood of R. R. Clerks, 281 U. S.
548. (1930).
U. S. v. Debs, 64 Fed. 724. (1894).
U. S. v. Elliott, 62 Fed. 801. (1894).
U. S. v. Alger, 62 Fed. 824. (1894).
U. S. v. Workingmen's Amalgamated Council, 54 Fed. 994. (1894).
Vegeahn v. Guntner et al., 44 N. E. 1077. (1896).
Virginia R. R. Co. v. System Federation, No. 40, 300 U. S. 515. (1936).
Wabash, St. Louis & Pacific R. R. Co. v. Illinois, 118 U. S. 557 (1886).
Waterhouse v. Comer, 55 Fed. 149. (1893).
West Coast Hotel v. Parrish et al., 300 U. S. 379. (1937).
Whitfield v. Ohio, 297 U. S. 431. (1936).
Wilson v. New, 243 U. S. 332. (1917).
Wolff Packing Co. v. Court of Industrial Relations, 262 U. S. 522. (1923).

INDEX

- Adamson Act (1916)
 - eight-hour day, 99, 161
 - fact-finding commission, 161
- Adkins v. Children's Hospital, 25, 37-39, 44-45, 268
- Alabama unemployment compensation law, 349
- Amalgamated Assoc. of Iron, Steel, Tin Workers, 237, 238, 239, 274
- American Arbitration Association, 121
- American Federation of Hosiery Workers, 106
- American Federation of Labor, 63, 65, 66, 69, 240, 312, 318, 335
- American Liberty League, 330
- American Oil Burner Assoc., 219
- American Railway Union strike (1894), 101
- American Sheet and Tin Plate Co., 239
- American Steel and Wire Co., 236
- American Steel Hoop Co., 238
- American Steel Sheet Co., 236
- American Tin Plate Co., 238
- Americanism, 258
- Ammons, Governor of Colorado, 282
- Anthracite Coal Commission
 - collective bargaining in anthracite, 56, 57
 - commission of 1902, 90, 98, 129, 206
 - conciliation and arbitration system, 91
 - hours grant (1903), 60
 - joint conference, 56, 92
 - trade agreements, 92
 - wage agreements after 1920, 202, 203, 205
 - wage settlement of 1920, 197
 - worker's income in coal, 217
- Anthracite Coal Industry Commission, 221, 225, 227, 235
- Anthracite Institute, 221
- Anthracite strike of 1922, 94
- Apex Hosiery case, 106, 108
- Ashurst-Sumner Act (1935), 74
- Arbitration
 - commercial and industrial, 121
 - compulsory in Kansas Act, 249
 - compulsory vs. voluntary, 119
 - in building trades, 323
 - Joint Arbitration Committee, 323
 - lack of confidence in (coal), 203
 - legal benefits of commercial contract, 118
 - legally enforced in Railway Labor Act, 156, 169
 - emergency boards, 169
 - inoperative, 157
 - more technical than mediation, 119
 - Philippine law, 323
 - protection to labor and industry, 322
 - state laws, 120
 - strengthened by Erdman Act, 158
 - superseded by mediation in Newlands Act, 159
 - voluntary in Anthracite Agreement of 1928, 206
 - Wisconsin Labor Board, 324
- Artisans and Mechanics Lien Law, 87
- Australian Minimum Wage, 350
- Awards, voluntary acceptance of, 251
- Bankruptcy and Emergency Transportation Act (1933), 170
- Bethlehem Steel Corp., 59
- Beveridge-Parsons Act, 343
- Bill of Rights, 257
- Bituminous Coal Commission, 71
- Bituminous Coal Conservation Act (Guffey Act), 64
- Board of Conciliation
 - anthracite, 97
 - coal, 206
 - railway, 100
- Board of Railroad Wages and Working Conditions (Railway Boards of Adjustment), 164
- Bootleg coal
 - attempts at control, 226
 - description of miners, 221
 - history of bootleg, 207
 - illegal, 207, 224
 - not depression-born, 220
 - output, 223
 - proposed remedies, 227-228
- Brandeis, Justice, 109
- Brownlow Commission, 117
- Bryce, James, 139
- Building Trades Employers Association, 323
- Bunting v. Oregon, 39
- Burke, Senator from Nebraska, 135

- Canadian Department of Labor, 141
- Canadian Conciliation Act (1900), 141
- Canadian Industrial Disputes Investigation Act (1907), 139, 251, 336, 340
 - attitudes of labor, employer, public, 144
 - board of conciliation and investigation, 142
 - compared with N.L.R.A., 149
 - contrast with U. S. laws, 148
 - General Motors sit-down strike, 146
 - mediation, 141, 149
 - objectives, 142
 - Section 26, 144
 - success of Act, 145
- Carnegie Steel Co., 236, 239
- Census, Bureau of, 231
- Chicago, Burlington and Quincy Railroad strike (1888), 156
- Child labor
 - attempts to pass national law, 343
 - constitutional amendment, 345
 - laws, 1916, 1918, 1919, 24
- Children's Bureau, 343
- Chipman, Justice, 49
- Chrysler strike (1937), 250
- Civil rights, 257
- Clark, John Bates, 36
- Cleveland, President, 156, 319
- Closed shop, 203
- Clayton Act (1914)
 - injunction provision, 104
 - preventive power of Congress, 132
- Coal
 - Anthracite Commission recommendation
 - expand output, 229
 - government regulation, 232
 - problems of regulation, 234
 - anthracite miners
 - foreign labor, 195
 - income, 217
 - living conditions, 192
 - numbers, 191
 - unions, 193
 - competition of other fuels, 219, 220
 - concentration of control, 188
 - decline of anthracite, 213
 - employment and wages, history of, 215
 - government refusal to take over, 235
 - inflated valuation, 213
 - mines closed, 214
 - rise in prices of, 218
 - strikes of 1900, 1922, 196-198
- Codes
 - minimum wage, 349
 - settlement of disputes, 248
 - value of, 123
- Collective bargaining
 - agencies for, 51
 - Canadian Act and N.L.R.A., 149
 - changes brought about by N.L.R.B., 276
 - established by statute, N.L.R.A., 226
 - Kansas Act, 250
 - necessity to labor of, 50
 - New York State Labor Relations Act, 227
 - New York State Labor Relations Board, 325
 - not for government employees, 321
 - railway workers, 169, 173, 176
 - recognized in anthracite, 256; in steel, 248
 - refusal, seen as obstructing interstate commerce, 271
 - self-organization rights, 88
 - struggle in steel, 238
- Colorado Act (1915), 251
- Colorado Federation of Labor, 282
- Colorado Fuel & Iron Co., 281, 285
- Colorado mine strike (1913), 281-4
- Commission of Inquiry for Inter-church World Movement, 259
- Committee Conference Plan, 294
- Committee on Industrial Relations, 129, 263
- C.I.O., 66, 303, 328, 330, 335
- Commonwealth Arbitration Courts (Australia), 350
- Community disorders, 340
- Compensation insurance (foreign), 354
- Conciliation Service (Dept. Labor), 133, 176, 180
- Conference
 - joint conference, 92-93, 98
 - right established by employees representation plan, 288
- Coolidge, President, 205
- Copley-Poindexter Bill, 344
- Council of National Defense, 162
- Court of Industrial Relations (Kansas, 1920), 249
- Court of Small Claims, 88
- Curran v. Galan, 47

- Danbury Hatters case, 101
 Debs case, 101
 Debs, Eugene V., 319
 Decentralization of industry, 352
 Displacement of men by machines, 352
 Draper, Dean William Lewis, 109
 Dutchess Bleachery, 294

 Earle, Governor of Pennsylvania, 208, 214, 224, 233
 Employee Representation Plan (of Colorado)
 committee system, 279
 fundamentally different from union, 279, 292
 no collective bargaining, 292
 provisions, 287
 social welfare, chief contribution, 296
 submission of grievances, 290
 types of, 279
 weaknesses, 288, 292, 296
 Employer-employee relations
 advantages of arbitration, 332
 balance of power needed, 328
 employee rights
 general gains, 262, 266
 labor the right of the individual worker, 264
 to quit work, 46, 260
 status of government workers, 307
 "unwritten law", 306
 responsibility with rights, 267
 strike, 52, 266
 employer rights
 discharge, 249
 limited by representation plan, 289
 restricted by N.L.R.B., 276
 evolution of, 298
 force responsible for concessions, 299
 opposed theories, 331
 reaction of business to government policy, 335
 English factory legislation, 22
 Epstein, Solicitor General, 225
 Erdman Act (1898)
 mediation, voluntary arbitration, 157
 no investigation, 158
 only train service covered, 158
 permanent government agency for arbitration, 158
 yellow dog provision unconstitutional, 159
 Esch-Cummins Act (Transportation Act), 99

 Fair Labor Standards Act (1938), 23, 27, 249, 343, 347, 352
 child labor, 127
 commerce between states, 126
 conciliation and arbitration, 126
 exempted employees, 351
 latest outstanding federal legislation, 126
 number of employees covered, 351
 standard wage and hours, 126, 351
 Fairmont case, 318
 Federal intervention
 agencies for settling disputes, 89
 authorized, 1888, 98
 criticism, 106
 difficulties of state and national legislation, 23
 problem of government labor, 307
 statutes, a recent development, 100
 troops (in Colorado), 283
 Federal Steel Co., 236
 Federal Trade Commission, 199
 Federal Trade Commission Act, 138
 Fifth Amendment, 40, 71
 First National Bank of N. Y., 212
 Flint, auto workers' strike (1937), 254
 Ford plant, 252, 300
 Fourteenth Amendment, 250, 300
 Frankfurter, Justice, 109
 Freedom of contract, 39-40
 Frick, Chairman (Carnegie Co.), 237

 Garrison, Secretary of War, 283
 Gary, Judge, 236
 Gary, of steel, 237, 240
 Gary v. Building Trades Council, 47
 General Cigar Company strike (1933), 124
 General Motors strike (Ontario 1937), 145, 146
 General Policies Committee, 191
 Germany, National Economic Council, 308
 Glen Alden Coal Co., 208
 Gompers, Sam, 152, 240, 319
 Goodyear strike (1936), 79

- Government employees
 economic basis of employee relationship, 314, 316
 government powers of intervention, 319-320
 laws governing, 317-321
 Lloyd-LaFollette Act, 317
 numbers, 308
 opposition to their organization, 309, 312
 regulated by legislation, 316
 status, 307, 321
 strikes, 318
- Grain Futures Act (1922), 132
- Green, William, 67
- Guffey Act (1935), 63, 64, 70, 332, 334
- Harding, President, 306
- Hawes-Cooper Act, 73
- Hazeltan, Pa., 196, 211
- Health insurance, 342, 354
- Hegel, 35
- Hepburn, Premier, 145
- Hitchman Coal & Coke Co. case, 103
- Hobhouse, Prof. Leonard, 229
- Holden v. Hardy, 39
- Holmes, Justice, 109
- Homestead strike, 236
- Hours of labor
 eight-hour day, railroads, 161
 hours for coal, steel, 60
 maximum hours, 341
 state laws, 78-79
- Hughes, Chief Justice, 44, 143, 254, 269
- Independent labor organization, 59
- Industrial arbitration courts (Australia), 32
- Industrial boards, 125
- Industrial Commission of 1901, 129
- Industrial Commission (Colorado 1915), 251
- Industrial committees, 289
- Industrial constitution, 285
- Industrial courts, 88
- Industrial principles
 development retarded by economic, political system, 336
 effect of growing power of labor, 331
 need for national labor policy, 330
 opposition to evolution of, 332
 world war a spur to development, 332
- Industrial Representation Plan (of Colorado)
 established in 1915, 285
 Filene and Goodyear Rubber Tire, 295
 machinery of plan, 285
 Standard Oil, 295
- Industrians, 295
- Injunction
 Clayton Act, 104
 government use in Chicago strike, 156, 319
 labor's attitude toward, 108
 Norris-LaGuardia, 105
 state interference, 109
- Inland Steel Co., 59
- Interior, Department of, 70
- Interstate commerce
 legislative, executive action to eliminate strife, 128
 power of Congress applied to railroads, 155
- Interstate Commerce Act (1887), 23, 154
- Interstate Commerce Commission, 154, 199, 231
- Investigation (compulsory), 251
- Iron Law of Wages, 35
- Italy, 308
- Joint Arbitration Committee, 322
- Joint conference
 in anthracite, 56
 evolution of legal rules, 98
 principles of, 92
 purpose, 93
 trade agreement by, 92
- Jordal v. Hayden, 49
- Kansas Act (1920), 249
- Kansas Court of Industrial Relations, 348
- Keating-Owen Bill, 344
- Kenyon Bill, 344
- King, W. L. Mackenzie, 283
- Kirkpatrick, Judge, 107
- Kraschel, Governor of Iowa, 138
- Labor Advisory Board, 63
- Labor courts, 340
- Labor, Department of, 99, 198
- Labor exchange offices, 341
- Labor, Secretary of, 133, 350
- Landis, Dean James M., 182
- Lauck, Chairman, 211
- Legal aid, 88
- Lehigh coal field, 187
- Lehigh Valley Coal Corporation, 208
- Leitch plan, 280

- Legislative enactments
 achievements, 299
 contemporary acts, 337
 deficiencies in national legisla-
 tion, 342
 early acts, 337
 national legislation limited, 347
 need for national program, 340,
 346
 organization and machinery for
 settlement of disputes, 307
 power to declare unconstitu-
 tional, 348
 Wagner Act first great effort, 341
 Lloyd-LaFollette Act, 317
 Lockouts, 149
 Lockwood Committee, 236
 Loewe v. Lawlor, 100
 Lodge, Senator, 344
 Ludlow Massacre, 282
 Lusk Committee, 258
 Luzerne County, 234
- MacIver, R. M., 341
 Mackay Radio case, 135
 Mahoney Shenandoah Coal District,
 209
 Massilon Works, 274
 Master Builders Association, 322
 Maytag case, 138
 McArdle, President of Amalgamated,
 239
 McDermott, Assistant District At-
 torney, 225
 Mediation
 defined, 118
 no compulsory power, 118
 no longer sole reliance in set-
 tling disputes, 153
 provided first in Erdman Act,
 157
 Railway Labor Act, 175
 superseded arbitration under
 Newlands Act, 160
 used first in 1906, 159
 Mill, John Stuart, 35
 Millis, Prof. Harry A., 182
 Minersville, Pa., 215
 Mines, U. S. Bureau of, 231
 Minimum Wage
 court objections to, 40-42
 different standards for men and
 women, 79, 350
 District of Columbia law, 37-39
 early laws, 34
 Fair Labor Standards Act, 351
 practical and legislative difficul-
 ties, 24, 37
- state laws, 268, 351
 uncertain constitutionality, 269
 Minnequa Steel Works, 285
 Mitchell, President United Mine
 Workers, 90, 196
 Morgan, J. P. Co., 212
 Morgan, Senator from Alabama, 156
- National Board of Adjustment, 174
 National Board of Mediation, 100,
 168, 171, 179
 National Industrial Conference
 Board, 220
 National Industrial Recovery Act,
 332, 343
 collective bargaining, 60
 effect on anthracite, 213
 effect on steel
 adjustment under code, 245
 inadequacy of code, 246
 wage increase, 243
 labor boards, 110
 research agencies, 124
 Section 7(a), 110
 value of codes, 123
 National Labor Relations Act, 27
 amendment, 338
 board to adjust disputes, 266, 273
 collective bargaining, 63, 133,
 266, 273
 constitutional, 128
 effect of strife on commerce,
 122, 128
 preventive legislation, 122, 132
 questions of administration, 123
 scheme of act, 271
 similar state laws, 77
 unfair labor practices, 130, 266,
 273
 National Labor Relations Board
 collective bargaining, organiza-
 tion, representation, 112, 276
 constitutional, 270
 duties (limited to interstate
 commerce), 110, 112, 130, 134,
 271
 not for mediation or concilia-
 tion, 113, 133
 objections to, 135
 permanent board an innovation,
 117
 relation to labor department, 111
 state laws similar, 276
 success of board (nature and
 number of cases), 275
 National Resources Board, 70
 National Steel Labor Relations
 Board, 111

- National Steel Corporation, 59, 236
 Newlands Act (1913)
 case record, 160
 changes in arbitration provision, 160
 imperfect machinery, 161
 permanent mediation board, 99, 159
 New South Wales, 350
 New York State Labor Relations Act, 277
 New York State Labor Relations Board, 139, 277, 325
 New York State Mediation Board, 277, 325
 New Zealand's Conciliation and Arbitration Act (1894), 31, 141, 350
 Norris-LaGuardia Act (1932), 105, 109

 Oil Heating Institute, 219
 Oshawa, Mayor, 145

 Packers and Stockyards Act (1921), 131
 Palmer-Owen Bill, 344
 Partnership Plan (Dutchess Bleachery)
 Dutchess Bleachery, 294
 Proctor and Gamble, 295
 share in administration and profits, 293
 Pecan-shelling firms, 352
 Philadelphia Rapid Transit Co., 296
 Philippine Islands, 323
 Pomerene, Senator, 345
 Pottsville, Pa., 209, 227
 President's Commission on Industrial Relations in Great Britain, 339
 compensation, 354
 health, 354
 higher standard of living, 353
 hours of work, 353
 real wages, 353
 settling disputes, 355
 social legislation, 353
 Sweden, 355
 President's Industrial Conference, 1919, 49, 94, 129
 Prevailing wage requirement, 349
 Prison-made goods
 curtailed, 73
 Department of Labor, report, 74
 efforts at state control, 73
 President's report of cotton garment industry, 76
 Proctor and Gamble, 294

 Productivity theory, 36
 Progressive Miners of America, 67
 Public
 intervention in labor disputes, 305
 party in labor disputes, 307
 Public opinion, 304
 Public Relief Commission, 254
 Public Service Commission (Kansas 1925), 251
 Pullman Strike (1894), 129, 157

 Railroad Retirement Board, 184
 Railway Labor Act (1888)
 first federal intervention, 155
 influence on Erdman Act, 157
 Railway Labor Act (1926), 129, 132
 legally enforced, 169
 voluntary arbitration, 167
 Railway Labor Act (amended 1934)
 adequate in preventing labor strife, 179
 principles governing labor relations, 174
 railway dispute of 1938, 181
 reasons for amending, 173
 separate enforcement of right and duty of mediation, 175
 Railway Labor Board, 99, 168
 Rankin, Pa., 302
 Reading Anthracite and Blue Coal, 219
 Remington Rand, 136, 253, 257
 Representation of employees, 334
 Republic Steel, Inc., 59, 273, 274
 Retirement fund, 341
 Revenue Act, 345
 Reynolds v. Davis, 52
 Ricardo, 35
 Rockefeller, John D., Jr., 256, 283, 284
 Rocky Mountain Fuel Co., 282
 Roosevelt, President Theodore, 90
 Russia, 308

 Schechter v. U. S., 63
 Schuylkill coal field, 187, 195
 Shamokin, Pa., 209, 211
 Sherman Anti-trust Act (1890)
 control power of Congress, 131
 penalties, injunctions to protect interstate commerce, 122
 restraint of labor, 100
 strikes, conspiracy to restrain interstate trade, 128
 Shop committees, 51, 303
 Sit-down strike
 early strikes, 79, 80

- Fansteel, Columbian, Sands
 - cases, 82
 - "quickie", 79
 - problems and issues, 81
- Social Security Act, 27, 64, 334, 348
 - federal, 76
 - states, 77
- Social Security Amendment (1939), 23
- South Pacific Railway dispute (1906), 159
- Stacey, Chief Justice, 182
- Stafford v. Wallace, 131
- Standard Oil, 295, 327
- States rights
 - complete state authority, 310, 313
 - delegated powers, 347
 - intrastate regulation, 277
 - right of society to self-protection, 143
 - status of federal intervention, 269
- Steel
 - C.I.O.-organized, 303
 - early absence of control, 93
 - key industry, 300-301
 - "labor-killing" industry, 301
 - present restrictions, 94
 - reason for failure of strikes in steel, 241
 - standard of living, 302
 - strike of 1919-20, 129
 - unions in steel, 238
- Steel Workers Organizing Committee, 58
- Strikes
 - Canadian Act and N.L.R.A., 151
 - causes, 53-54, 57
 - conciliation an after-strike measure, 180
 - cost to community, 252-3, 255-7
 - criteria of success, 67-68
 - defined, 45-46
 - direct negotiation, 68
 - distrust of management, 303
 - effect of wages in coal, steel, 57-58
 - government employees, 308, 311, 313, 315, 318
 - government power to intervene, 253, 319-20
 - increase of strikes 1937-38, 70
 - joint conference, 93
 - legislation a means to end industrial disputes, 265
 - legislation hampering right to strike "unamerican", 152
 - need for orderly procedure in settling disputes, 261
 - N. Y. State Mediation Board, 277
 - public interest, 277
 - purposes, 46, 52
 - reaction to economic insecurity, 306
 - relief load increase, 254
 - restrictions on civil rights, 258
 - severity of, 106
 - voluntary arbitration, 93
 - weapon, not legal adjustment, 54
 - Wisconsin Labor Board, 324
- Strike-breaking, 325-328
- Sutherland, Justice, 39
- S.W.O.C., 59
- Taft, Chief Justice, 109
- Talmadge, Governor, 327
- Tasmania, 350
- Tastowski, Ambrose, 124
- Taxing power of Congress, 345
- Texas and New Orleans Railroad, 169
- Textile Labor Relations Board, 112
- Thayer, Judge, 47
- Thirty-hour week, 349
- Trade agreement
 - between employer and employee, 264
 - Industrial Representation Plan, 285-87, 291
 - law governing the labor relation, 263
 - system of negotiation established, 299
- Train Service Brotherhood dispute (1916), 161
- Transportation Act of 1920, 162, 163, 166, 167
- Unemployment
 - causes, 84
 - extent, 84
 - need for legislation, 85
 - Social Security, 87
- Unemployment Compensation laws, 348
- Unemployment insurance, 341
- Unions
 - A.F.L. war gains, 240
 - anti-trust restrictions
 - Clayton Act, 103
 - Sherman Act, 101
 - prevention of sit-down, 107
 - violations, 106

- company unions diminishing since 1933, 334
- "conspiracy", 47
- desirable effects of regulated organization, 262
- dissension in organized labor, 335
- early status and decisions
 - common law legality, 47
 - federal tolerance, 47
 - illegal under statutes, 47
 - legal by decision, 47
 - legal by statute, 49
- encouraged under Railway Labor Act, 169
- government, advantages of unionization in, 314, 321
- growth accelerated by coal, steel, 300
- legal status in Great Britain, 339
- nationalizing effects of railroad administration, 165
- non-discrimination in employees' representation plan, 287
- organizing campaign, 65
- responsibilities of organization, 303
- United Anthracite Workers, 67
- United Auto Workers of America, 81, 147
- United Electrical, Radio, Machine Workers, 138
- United Mine Workers, 56, 67, 90, 191, 193, 194, 195, 196, 201, 202, 332
- United Mine Workers of Colorado, 280
- United Rubber Workers, 79
- United States Army, 155
- United States Board of Mediation, 100, 161
- United States Coal Commission, 1923, 190, 191
- United States Railroad Administration, 160, 163
- United States Railroad Labor Board, 164
- United States Steel Corporation, 94, 236, 242, 300, 301, 327
- Vegeahn v. Guntner, 48
- Victor American Fuel Co., 281
- Victoria Factories and Shops Act (1912), 32
- Wabash decision, 24, 154
- Wage Board System, 32, 33
- Wage Fund Theory, 35
- Wages
 - coal, 57
 - railroad, 170, 184
 - steel, 57-58
- Wagner Act, 27
- Walsh-Healey Act, 254
- War Department, 311, 321
- War Labor Board, 332
- Washington State Minimum Wage law, 268
- Watertown, Massachusetts, 321
- Welborn, J. R., 284
- West Coast Hotel, 43-45
- White, President United Mine Workers, 56
- Wilkes-Barre, Pa., 211
- Wilson, President, 161, 240, 282
- Wilson's Industrial Conference of 1919, 49, 94, 129
- Wisconsin Labor Board, 324
- Wisconsin Milk strike, 253
- Wolff Packing Company case, 250
- Workers Educational Association (Sweden), 356
- World War, 332
- Wyoming coal field, 187
- Yellow dog contract, 100, 159, 170, 273
- Youngstown Sheet and Tube Corporation, 59

VITA

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While a graduate student at Columbia the author was a member of the seminars of Professors Franklin H. Giddings and Alvan A. Tenney in sociology, of Professor Joseph P. Chamberlain in public law, and of Professor Samuel McCune Lindsay in social legislation. Since 1930 he has served as assistant and associate professor of legislation in Syracuse University (New York). Since 1936 he has been a member of the New York Child Labor Committee, and of the Executive Board of the National Committee on Prisons and Prison Labor, and since 1938, of the New York Mediation Board Panel.

